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# VIEW

OF

# SOCIETY IN EUROPE.

A

# VIEW

OF

# SOCIETY IN EUROPE,

IN ITS PROGRESS FROM RUDENESS

TO REFINEMENT:

OR,

# INQUIRIES

CONCERNING

THE HISTORY OF

## Law, Government, and Manners.

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BY GILBERT STUART, LL. D.

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Quae priſcis memorata Catonibus atque Cethegis,
Nunc ſitus informis premit, et deſerta vetuſtas. HOR.

EDINBURGH:

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# ADVERTISEMENT.

IT is uſual to treat law, manners, and government, as if they had no connection with hiſtory, or with each other. Law and manners are commonly underſtood to be nothing more than collections of ordinances and matters of fact; and government is too often a foundation for mere ſpeculation and metaphyſical refinements. Yet law is only a ſcience, when obſerved in its ſpirit and hiſtory; government cannot be comprehended but by attending to the minute ſteps of its riſe and progreſſion; and the ſyſtems of manners, which characteriſe man in all the periods of ſociety which paſs from rudeneſs to civility, cannot be diſplayed without the diſcrimination of theſe different ſituations. It is in the records of hiſtory, in the ſcene of real life, not in the conceits and the abſtractions of fancy and philoſophy, that human nature is to be ſtudied.

But, while it is in the hiſtorical manner that laws, cuſtoms, and government, are to be inquired into, it is obvious, that their dependence and connection are cloſe and intimate. They all tend to the ſame point, and to the illuſtration of one another. It is from the conſideration of them all, and in their union, that we are to explain the complicated forms of civil ſociety, and the wiſdom and accident which mingle in human affairs.

After

After this method, I have endeavoured to inveſtigate my ſubject. The topics I canvaſs in the following ſheets, are various, and conſtitute a difficult and important branch of my undertaking. If I am ſo fortunate as to obtain the ſanction of the public approbation, I ſhall proceed to fill up the picture I have begun, and conſider, in future publications, civil juriſdiction, nobility, conſtitutional law, and cultivated manners.

The foundations of a work like this I have attempted, muſt be laws of barbarous ages, antient records, and charters. Theſe I could not incorporate, with propriety, in my narrative. This inſtructive, but taſteleſs erudition, did not accord with the tenor of a portion of my performance, which I wiſhed to addreſs to men of elegance, as well as to the learned. It conſiſted, however, with the ſimpler and the colder ſtyle of diſſertation. My proofs, accordingly, appear by themſelves; and, in conſequence of this arrangement, I might engage in incidental diſcuſſions; I might catch many rays of light that faintly glimmer in obſcure times; and, I might defend the novelty of my opinions, when I ventured to oppoſe eſtabliſhed tenets, and authors of reputation.

Though I have employed much thought and aſſiduity to give a value to theſe papers, yet I communicate them to the public with the greateſt diffidence. My materials were buried in the midſt of rubbiſh, were detached, and unequal. I had to dig them

them up anxiouſly, and with patience; and, when diſcovered and collected, it was ſtill more difficult to digeſt and to faſhion them. I had to ſtruggle with the darkneſs and imperfection of time and of barbarity. And, from the moſt able hiſtorians of our own and foreign nations, who might naturally be expected to be intelligent guides for the paths I have choſen, I could derive no advantage. They generally prefer what is brilliant to what is uſeful; and they neglect all diſquiſitions into laws and into manners, that they may deſcribe and embelliſh the politics of princes, and the fortunes of nations, the ſplendid qualities of eminent men, and the luſtre of heroic action.

EDINBURGH, January 1778.

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# VIEW

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## BOOK I.

### CHAPTER I.

### Of the GERMANS before they left their Woods.

#### SECTION I.

*The Inſtitutions, Government, and Character of the Germanic Tribes.*

IT is of little moment to inquire into the origin of the antient Germans. Their manners and government are ſubjects more intereſting, and concerning which there are memorials of great curioſity and importance. The picture of theſe nations has been drawn by Tacitus ; and the affairs of men ne-

ver found an obſerver more accurate and penetrating. In following ſuch a guide, it is impoſſible not to convey information; and, on this ſubject, no modern has a title to ſpeculate, who has not paid a moſt minute attention to his treatiſe. Antiquity has not given to the kingdoms of Europe a preſent more valuable.

The leading circumſtance in diſcriminating the manners of barbarous and refined times, is the difference which exiſts between them in the knowledge and the management of property. The want of commerce, and the ignorance of money, permit the barbarian to exerciſe a generoſity of conduct, which the progreſs of the arts is to deſtroy. The Germans conceived not that their deſcendants were to grow illuſtrious by acquiſitions of land, and that they were to employ the metals as a ſource of influence. Land was yet more connected with the nation than the individual. The territory poſſeſſed by tribes was conſidered as their property, and cultivated for their uſe. The produce belonged to the public ; and the magiſtrate, in his diſtributions of it, paid attention to the virtue and the merits of the receiver (1).

The German, accordingly, being unacquainted with particular profeſſions, and with mercenary purſuits, was animated with high ſentiments of pride and greatneſs. He was guided by affection and appetite ; and, though fierce in the field, and terrible to an enemy, was gentle in his domeſtic capacity, and found

a pleaſure in acts of beneficence, magnanimity, and friendſhip.

A ſtate of equality, in the abſence of the diſtinctions of property, characteriſed the individuals of a German tribe, and was the ſource of their pride, independence, and courage. Perſonal qualities were alone the foundation of pre-eminence. The ſons of a chief were not diſtinguiſhed from thoſe of the ſimple warriour, by any ſuperior advantages of education. They lived among the ſame cattle, and repoſed on the ſame ground, till the promiſe of worth, the ſymptoms of greatneſs, ſeparated the ingenuous from the vulgar, till valour claimed them (2). Ignorant of the arts of peace, they purſued, with keenneſs, the occupations of war. Where communities, perpetually inflamed with rivalſhip and animoſity, brought their diſputes to the deciſion of battles, and were agitated with revenge and with glory, the opportunities of diſtinction were frequent. The only profeſſion known to the Germans was that of arms. The ambitious and enterpriſing courted dangers where they might acquire renown, and diſplay their conduct and their proweſs. To ſuch a height did the military ardour prevail, that, if a tribe happened at any time to languiſh in eaſe, its youthful and impatient heroes ſought thoſe nations who were then at war. They diſdained to remain in inaction; and could not ſo eaſily be perſuaded to till the earth, and to wait its returns, as to challenge an enemy, and to hazard their lives. They thought it mean and ignoble to ac-

quire by their labour, what they might purchaſe with their blood (3).

The animated temperament they diſplayed in war, was alſo apparent in their private concerns. To the chaſe they addicted themſelves with no meaſure of moderation. And, in parties at dice, they engaged in their ſobereſt and moſt ſerious hours, and with ſuch hope or temerity, that they riſked their liberty and perſons on the laſt throw. The affection with which they embraced their friends was ardent and generous. To adopt the reſentments, as well as the amities of their relations and kindred, was a duty which they held indiſpenſible (4). In hoſpitality they indulged with the moſt unbounded freedom. The entertainer, when exhauſted, carried his gueſt to the houſe of his next neighbour. Invitations were not waited for; nor was it of conſequence to be invited. A reception, equally warm and hearty, was, at all times, certain. On theſe occaſions, giving way to the movements of the heart, they delighted in preſents; but they neither thought themſelves entitled to a return for what they gave, nor laid under an obligation by what they received (5). They yielded to the impulſe of paſſion, and the pleaſure they felt was their recompenſe. Their gifts were directed by no view of an immediate or diſtant advantage; their generoſity was no traffic of intereſt, and proceeded from no motive of deſign.

But,

But, amidſt all this ardour, they were averſe from labour. The women and the infirm diſcharged the offices of the houſe. The warriour did not ſubmit to any domeſtic occupation. He was to baſk whole days by the fire; and a ſloth, joyleſs and ſupine, was to ſucceed and to relieve the briſkneſs and fatigue of action (6). His admiration of fortitude, which was the cauſe of this indolence, and this contempt of drudgery, was at the ſame time to produce a ſtatelineſs in his behaviour. He was not to loſe his virtue, or to weaken the vigour of his mind, in the practice of mechanic or unworthy purſuits. When he walked, he ſeemed conſcious of importance; he caſt his eyes to the ground, and looked not around him for the objects of a vain and frivolous curioſity.

In the diet of theſe nations, there was much ſimplicity; it conſiſted of wild apples, new-killed veniſon, and curdled milk. They expelled hunger without oſtentation, or any ſtudied preparations of food; but, in ſatisfying thirſt, they were leſs temperate. When ſupplied to their deſire in intoxicating liquors, they were no leſs invincible in vice than in valour (7). Yet, in the diſgraceful moments of debauch, they applied to public affairs, and debated concerning peace and war; and, in the heat of their diſputation and riot, the dagger was often to deform with blood the meetings of friendſhip and of buſineſs. In theſe ſeaſons, they imagined that their minds were diſpoſed to conceive honeſt ſentiments, and to riſe into noble ones. But, in

an

an after-period, the undiſſembled thoughts of every one were diligently canvaſſed; a proper attention being paid to the time when they were firſt delivered, and to the purpoſe which then employed them. It was their meaning to deliberate when they could not deceive, and to form reſolutions when they could not err (8).

They did not live in towns, and could not endure to have their houſes contiguous. They built as they found a ſpot to their fancy, as they were attracted by a fountain, a plain, or a grove. But, being unacquainted with a private property in land, they were not ambitious of poſſeſſions. They vied not in the extent or the fertility of their grounds, in the rearing of orchards, and in the incloſing of meadows. Corn was the only produce they required from the earth; and they divided not the year into proper ſeaſons. They underſtood, and had names for winter, ſpring, and ſummer, but had no idea of the term, and little knowledge of the fruits of autumn (9).

In their religion they were groſs, like almoſt all nations, whether ſavage or cultivated. They believed in a plurality of gods; but thought it derogatory from their majeſty to ſhut them up within walls, or to faſhion them in reſemblance to any human form. Their groves were appropriated to the uſes of devotion; and, in the awful reſpect inſpired by ſilence in the deep receſſes of their woods, they felt and acknowledged the power of their deities.

deities. To augury and divination they were much addicted; and they were fond to draw prognoſtics and intimation from the running of water, the flight of birds, and the neighing of horſes. Their prieſts had greater authority than their kings or chieftains; for it was not by any principle of expediency or reaſon that their actions and conduct were to be aſcertained and examined. They were governed by the impulſes and dictates of their divinities; and, being the interpreters of the will and intentions of theſe, they were able to exerciſe a juriſdiction uncontrollable and ſacred (10).

The office of a magiſtrate was known and reſpected among theſe nations. The prince, or the chieftain of a diſtrict, with the body of his retainers or followers, conſtituted a court, which heard accuſations, and determined concerning crimes. Traitors and deſerters were hanged on trees. Cowardice, and the crime againſt nature, were conſidered as of equal atrocity; and the perſons convicted of them were choked in mire and ſwamps by the preſſure of hurdles. A corporal puniſhment, and compenſations in corn or cattle, were the atonements of leſſer delinquencies (11).

Noble birth, but more frequently the poſſeſſion of ſuperior qualities, entitled to the office and juriſdiction of a chief: And the general of an army was to command leſs by authority than from example. He drew reſpect and obſervation by his activity, his addreſs, and the ſplendour of his exploits (12). Even the

the hopes and ambition of the ſimple warriour were made to depend on his perſonal honour and courage. Yet, with all this attention to merit, and with all their elevation of character, they were prone to deceive and to circumvent. They accounted it meritorious to ſteal upon their enemies in the darkeſt nights; they blackened their ſhields, and painted their bodies, to be terrible; and, to give ground, but immediately to return to the charge, was a common and an admired feat of their prudence. Cunning and ſtratagem appeared to them to be wiſdom; and, though remarkable for courage, both active and paſſive, they expoſed it to ſuſpicion by the arts which, in a cultivated age, are characteriſtic of the puſillanimous (13).

It is alſo remarkable, that, though attentive to juſtice, with a punctilious exactneſs, within the bounds of their particular nations, they deſpiſed it with regard to other ſtates and communities. Beyond the frontier of his tribe, the German was a thief and a robber. While, in the one inſtance, his theft or depredation was a crime of the deepeſt dye, and puniſhed with death, it was, in the other, a mark of valour, and an expreſſion of virtue. To make incurſions againſt a neighbouring people, though at peace; to carry off their cattle, and to lay waſte their territory, were actions of renown and greatneſs. They rouſed the ambition of the valorous, and were occupations in which they acquired reputation, and prepared themſelves for ſcenes of greater danger and glory (14).

But,

But, the circumſtance in the cuſtoms of theſe nations the moſt valuable, and which, like all their more remarkable features, aroſe from their unacquaintance with property, was the paſſion they entertained for independence and liberty. Every perſon who was free, conſidered himſelf in the light of a legiſlator. The people preſcribed the regulations they were to obey. They marched to the national aſſembly to judge, to reform, and to puniſh; and the magiſtrate and the ſovereign, inſtead of controlling their power, were to reſpect and to ſubmit to it. Stated or regular terms were appointed for the convention of their public council; and a freedom of ſpeech, entire and unlimited, was permitted. His age, his eloquence, his rank, and the honour he had acquired in war, were the qualities which procured attention to the ſpeaker; and the people were influenced by perſuaſion, not by authority. A murmur coarſe, and often rude, expreſſed their diſſent: The rattling of their armour was the flattering mark of their applauſe (15).

While theſe inſtitutions and manners are expreſſive, in general, of the German communities, there are exceptions which it is not my province to explain. In the enumeration which is made by the Roman hiſtorian of the Germanic tribes, there are perceivable unequal degrees of civilization and refinement. The Chauci, for example, were an improved and an illuſtrious nation, and ſupported their greatneſs by their probity. They were lovers of peace and quiet, and contemners of avarice and ambition.

They provoked no wars; engaged in no incurſions or robberies; and, what may be conſidered as a certain proof of their power and valour, preſerved their ſuperiority, without having recourſe to injuries and oppreſſions. When called upon, however, by the exigency of their affairs, they were not ſlow to take arms and to levy armies. They inhabited an extenſive territory, were rich in men and in horſes, and in peace and in war maintained their reputation. The picture of the Fenni, on the contrary, is that of mere rudeneſs. They had no arms, no horſes, no religion. To the moſt ſavage fierceneſs, they had joined the moſt abject poverty. They clothed themſelves in the ſkins of beaſts, fed, at times, on herbage, and ſlept on the earth. Their chief dependence was on their arrows; and, having no iron, they pointed them with bones. The women accompanied the men to the chaſe, and demanded a ſhare of the prey. A covering, inwrought with boughs, was all the ſhelter which defended their infants from the rigour of ſeaſons, and the ferocity of animals. To this miſerable dwelling their young men returned; and here their old men found a refuge. Theſe courſes of barbarouſneſs, this melancholy ſadneſs, they preferred to the fatigue of cultivating the earth, and of building houſes, to the agitations of hope and fear attendant on a care of their own fortunes, and on a connection with thoſe of others. Unapprehenſive of any danger from men, and awed by no terror of the gods, they had reached a ſtate which is nearly unattainable to all human endeavours—the being entirely without a wiſh (16).

The

The majority of the tribes or communities of Germany may be ſaid to have occupied a middle ſtate between the cultivation of the Chauci and the ſavageneſs of the Fenni. And it is ſufficient to have ſelected and expreſſed the more general and the more diſtinguiſhed particulars which regard their inſtitutions, government, and character. With theſe in my view, I proceed to deſcribe the condition of their women; a ſubject which, though little attended to by the learned, may lead to concluſions of intereſt and curioſity.

## SECTION II.

### *An Idea of the German Women.*

IT has been aſſerted, that men, in ſavage and barbarous periods, are carried to the ſex merely from the incitement of animal gratification, and that they feel not the power of beauty, nor the pleaſures which ariſe from love; and a multitude of facts have been produced from hiſtory to confirm this theory. It is concluded, of conſequence, that, in ſuch times, women are in an abject ſtate of ſervility, from which they advance not till the ages of property (1).

One would fancy it, notwithſtanding, conſiſtent with reaſon, to imagine, that the ſexes, in every period of ſociety, are important to each other; and that the member of a rude community, as well as the poliſhed citizen, is ſuſceptible of tenderneſs and ſentiment. He is a ſtranger, indeed, to the metaphyſic of love, and to the fopperies of gallantry; but his heart cannot be inſenſible to female attractions. He cannot but be drawn by beauty;

beauty; he muſt know a preference in the objects of his affection; and he muſt feel and experience, in a certain degree, at leaſt, that bewitching intercourſe, and thoſe delightful agitations, which conſtitute the greateſt charm of cultivated life.

This opinion, I conceive, is ſtrongly confirmed by the hiſtory of the Germanic ſtates. Their general character, with particular and obvious facts, illuſtrate the importance and the conſideration in which they held their women.

Even in the age of Caeſar, the German tribes had conceived and acknowledged the idea and exiſtence of a public intereſt, and, in general, had ſubmitted to a mode of government in which the chiefs and the people had their departments as well as the prince. They are deſcribed in a ſimilar, but a more cultivated ſituation, by Tacitus; and the ſpirit of liberty and independence which animated their actions, was to produce that limited and legal adminiſtration which ſtill gives diſtinction and dignity to the kingdoms of Europe. Among ſuch nations, accordingly, the women were neceſſarily free, and ſenſible only of the reſtraints which ariſe from manners.

The ſtate of ſociety, which precedes the knowledge of an extenſive property and the meanneſſes which flow from refinement and commerce, is in a high degree propitious to women. To treat them with cruelty does not conſiſt with the elevation of ſentiment

timent which then prevails. Among the people, of whom I ſpeak, even the ſlave was expoſed to no ſtudied inſult or oppreſſion (2). Of the women, the warriour and the citizen conſidered himſelf as the friend and the protector; and their weakneſs only ſerved to render the attachment to them the more laſting and tender.

While courage and ſtrength and feats of proweſs gave glory to the men, the women were judged of by a different ſtandard. They were ſtudious to recommend themſelves by the performance of domeſtic duties. They attended to the cares of the family and the houſe; and the mother found a long and a ſerious occupation in the rearing of her children, who were not allowed to approach the father in public till a certain age (3). To her daughters ſhe endeavoured to give the accompliſhments which might win to them the chiefs who were moſt celebrated and powerful. To her ſons ſhe recited the exploits of their anceſtors, and formed them to valour.

Nor are theſe the only ſources of the reſpect which was paid to them. It has been often remarked, that, in every period of ſociety, the women are more diſpoſed to rapture and devotion than the men, and that their curioſity to pry into futurity is more extravagant. The ſuperſtitious weakneſſes, however, of the ſex, which, in refined times, are a ſubject of ridicule, lead to reverence and attention in a rude age. The Germanic armies ſeldom took the

the field without ſorcereſſes; and theſe had an important ſhare in directing their operations (4). In private and civil affairs, their authority was not leſs deciſive. On the foundation of the wonder and aſtoniſhment excited by the knowledge arrogated by the women, by the ſkill they diſplayed in divination, and, above all, by the ceremony and the cruelty of the rites they practiſed, a ſolid and permanent influence was eſtabliſhed (5). It was thought, that they had ſomething divine in their nature; and the names of many of them, who were worſhipped as divinities, have come down in hiſtory (6).

To attend to the qualities of plants, and to the curing of wounds, was another branch of their occupation (7); and, in times of war and depredation, it is difficult to conceive a circumſtance which could recommend them more. Nor were they inattentive to adorn their perſons. The linen, which made the principal article of their dreſs, was of their own manufacture; and they had a pride in intermixing it with purple (8). They went frequently into the bath; their hair flowed in ringlets; a part of their charms was induſtriouſly diſplayed; and, in evidence of their beauty, there may be brought the teſtimony of the hiſtorian, and the ſong of the poet (9).

In the more ſerious and important wars in which theſe nations engaged, the chiefs and warriours ſeem conſtantly to have carried their wives and female relations along with them as an incitement to their valour. Theſe objects of their affection they placed

placed at a ſmall diſtance from the field of battle: And the moſt terrible calamity which could befal them, was their captivity. By their importunity and wailing, it is recorded, that armies, in the moment of ſubmiſſion, have been recovered; and the ſtipulations of ſtates were never ſo certainly ſecured as when ſome virgins of rank were delivered among the hoſtages (10). In the blood of their women, it was conceived there was a charm and a virtue; and hence it proceeded, that, to their uncles by the *mother* and to their fathers, children were the objects of an *equal* affection and tenderneſs (11).

But, what evinces their conſideration beyond the poſſibility of a doubt, is the attention they beſtowed on buſineſs and affairs. They felt, as well as the noble and the warriour, the cares of the community. They watched over its intereſt, conſidered its connection with other ſtates, and thought of improving its policy, and extending its dominion. They went to the public councils or aſſemblies of their nations, heard the debates of the ſtateſmen, and were called upon to deliver their ſentiments. And, what is worthy of particular notice, this conſequence in active ſcenes they tranſmitted to their poſterity (12).

Such, in general, was the condition of women among our anceſtors, while they were yet in their woods; and ſuch, I ſhould think, is in a great meaſure their ſtate in every country of the globe in an age of ſociety and manners, which knows not the cares, the corruptions, and the diſtinctions of property (13).

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## SECTION III.

### *Of Marriage and Modeſty.*

IT is not to be denied, that, before the idea of a public is acknowledged, and before men have ſubmitted to the ſalutary reſtraint of law, the diſorders of promiſcuous love diſturb and disfigure ſociety (1). Yet, even in theſe wild and informal times, there exiſt parties, who, clinging together from choice and appetite, experience the happineſs of reciprocal attentions and kindneſſes; who, in the care of their offspring, find an anxious and intereſting employment, and a powerful ſource of attachment; who, moved by love, by friendſhip, by parental affection and habitude, never think of diſcontinuing their commerce; and who, in fine, look forward with ſorrow to the fatal moment when death is to ſeparate them.

This cohabitation or alliance, attracting attention by its decency, its pleaſures, and its advantages, would grow into a cuſtom or a faſhion. For, what men approve, they will imitate. To this

*uſe*, therefore, it ſeems not unreaſonable to refer the inſtitution of marriage; and thus, before it is known as a political conſideration, it, in ſome meaſure, ſubſiſts in nature. As men increaſe in their numbers, they perceive the neceſſity of attending to an union, which is no leſs important to ſociety than to the individual, which has in view the ſupport of the one, and the felicity of the other. A ceremonial is invented which gives it authority and duration. The ſtate takes a ſhare in the cares of the lover, and preſcribes the forms that are to bind him to his miſtreſs. Nature, while ſhe fits the ſexes for each other, leaves it to polity or law to regulate the mode of their connection.

The race of men who antiently inhabited Germany, are repreſented, as was formerly obſerved, in the condition of nations; and a legiſlature, compoſed of the prince, the nobles, and the people, directed their operations. This aſſembly, which gave a ſanction to military expeditions, and adjuſted alliances and treaties, managed alſo the objects of internal concern. It extended its juriſdiction over the women as well as over the other parts of the community, and aſcertained the ceremonial of marriage.

When the individual was called from the houſe of his father, and inveſted with arms; when he was advanced from being a part of a private family to be a member of the republic, he had the capacity of entering into contracts, and of ſingling out the object of his affections. The parties who had agreed to unite their

their intereſts, having obtained the approbation of their parents and relations, made an interchange of gifts in their preſence. The lover gave his miſtreſs a pair of oxen, a bridled horſe, a ſhield, a ſword, and a javelin; and ſhe, in her turn, preſented him with ſome arms. It was thus they expreſſed their attachment to each other, and their willingneſs to diſcharge mutually the duties of the married ſtate. This was their ſtrongeſt tie; theſe were their myſterious rites, theſe their conjugal deities (2).

Nor, let it be fancied that, in this ceremonial, there was any thing humiliating to the woman. It ſuited exactly the condition of a rude ſociety, and muſt not be judged of by the ideas of a refined age. The preſents, indeed, were expreſſive of labour and activity; but labour and activity were then no marks of reproach; and, in fact, the joined oxen, the prepared horſe, the preſented arms, inſtead of indicating the inferiority of the bride, denoted ſtrongly her equality with her huſband. They admoniſhed her, that ſhe was to be the partner and the companion of his toils and his cares, and that, in peace and in war, ſhe was to ſuſtain the ſame fatigues, and to bear a part in the ſame enterpriſes (3).

The fidelity of the married women among theſe nations, and the conſtancy and tenderneſs of their attachment, expreſs alſo their equality with the men and their importance (4). A ſtrict obſervance of the marriage-bed was required of them. The

crime of adultery was rare; and, in the ſeverity of its puniſhment, the reſpect is to be traced which was paid to modeſty. It was immediate, and inflicted by the huſband. He deſpoiled the culprit of her hair and garments, expelled her from his houſe before her aſſembled relations, and whipped her through the whole village (5). Of the young women, the moſt powerful recommendation was the reſerve and coyneſs of their demeanour. A violation of modeſty was never pardoned. Nor youth, nor beauty, could procure a huſband. Vice was not here ſported with; and, to corrupt and to be corrupted, were not termed the faſhion of times (6).

In the ſimplicity of their manners, they found a preſervation againſt vice more effectual than the laws of cultivated ſtates. The gallantries of the young men began late; their youth was, therefore, inexhauſted. Thoſe of the young women were not earlier. They mingled, when they were equal in age, in procerity, and ſtrength, and had a progeny who expreſſed their vigour. Diſgrace attended on celibacy; and the old were honoured in proportion to the number and the merits of their deſcendants. A dread of pain and the care of beauty checked not generation (7). The mother ſuckled her own children (8); and, in diſcharging this taſk, anticipated the greatneſs and the felicity ſhe was to acquire and to experience from their virtues, and in their gratitude (9).

It was thus the chaſtity of the women was guarded: It was thus their importance was confirmed. No allurements of public ſhows and entertainments relaxed their virtue, and inſinuated into them the love of pleaſure; no incitements of luxury inflamed their deſires and expoſed them to corruption; and what the Romans ſeem to have conſidered as particularly fatal, no acquirements of knowledge and of letters diſcovered to them the arts which miniſter to love (10).

In ſome of their ſtates or communities, the reſpect of modeſty was ſo great, that it was not lawful but to virgins to marry; who, without the hope or wiſh of ſecond nuptials, received one huſband, as they had done one body and one life, and had no thoughts or deſires beyond him. It was their ambition and pride, if they ſurvived the objects of their affection, to preſerve, unſullied, the honours of widowhood; and, when the barbarians had made ſettlements in the provinces of Rome, when their manners had refined, and the ſex were, in ſome meaſure, emancipated from this reſtraint, the ſpirit of the uſage continued to operate. It augmented, as to the widow, the matrimonial ſymbols; a larger dower than uſual was neceſſary to overcome her reluctance to a ſecond bed (11); and, while it encouraged the king or the magiſtrate to exact a greater fine from her on her marriage (12), it entitled her to a higher compenſation for injuries (13).

Amidſt

Amidſt the modeſty of ſuch uſages and manners, we muſt not look for polygamy. It was unknown to theſe nations; though, it is to be allowed, that a few of the chiefs or more renowned princes were ſurrounded with a number of wives (14). This, however, was a matter of grandeur, not of appetite; and its ſource is to be found in maxims of policy, in the ambition of individuals, and in that of ſtates. A prince, to ſupport or extend his greatneſs, connected himſelf with different families; and the deliberations of his tribe not unfrequently pointed out to him the alliances he ſhould court (15).

To the degrees of conſanguinity and blood, concerning which nature has dictated ſo little, and polity ſo much, it is not to be conceived that they paid a ſcrupulous attention in their marriages (16). It is a ſubject on which no infant-communities are exact. They attended to it when, having ſallied from their woods, they grew refined by time, obſervation, and experience.

# CHAPTER II.

## The political Eſtabliſhments of the Barbarians after they had made Conqueſts.

### SECTION I.

*The Barbaric Conqueſts. The Origin of the Domains of the Prince, and of Allodiality. The Lands of the Fiſc. The Foundations of the Feudal Aſſociation, the Riſe of the Feudal Grant, and the Genius of the Feudal Syſtem.*

THE Romans, corrupted and ſervile in every quarter of the empire, were unable to oppoſe the valour and the activity of the Germanic tribes. And, the manners of the conquerors and the conquered being eſſentially different, and even contradictory, the revolution produced in the condition of Europe was total and deciſive (1). It is thence chiefly, by an attention to the way of thinking which prevailed in their original ſeats, that the

ſtate

ſtate is to be inveſtigated which the barbarians exhibited on their conqueſts; and that the origin and the nature of thoſe inſtitutions are to be diſcovered, which, overturning in every country they invaded, the antient forms of legiſlation and government, aroſe on their ruins. In the maſterly treatiſe, accordingly, in which Tacitus paints, with his inimitable pencil, the manners of theſe nations, I muſt look for the foundations of this ſtate, and theſe inſtitutions.

'The members of a German nation,' ſays this accompliſhed hiſtorian, 'cultivate, by turns, for its uſe, an extent of land cor-'reſponding to their number, which is then parcelled out to in-'dividuals in proportion to their dignity: Theſe diviſions are 'the more eaſily aſcertained, as the plains of Germany are exten-'ſive; and, though they annually occupy a new piece of 'ground, they are not exhauſted in territory (2).'

This paſſage abounds in inſtruction, the moſt important. It informs us, that the German had no private property in land, and that it was his tribe which allowed him annually for his ſupport a proportion of territory; that the property of the land was inveſted in the tribe, and that the lands dealt out to individuals returned to the public, after they had reaped the fruits of them; that, to be entitled to a partition of land from his nation, was the diſtinction of a citizen; and that, in conſequence of

of this partition, he became bound to attend to its defence, and to its glory.

With theſe ideas, and with this practice, the Germans made conqueſts. In conformity, therefore, with their antient manners, when a ſettlement was made in a province of the empire, the property of the land belonged to the victorious nation, and the brave laid claim to their poſſeſſions. A tract of ground was marked out for the ſovereign; and, to the inferior orders of men, diviſions correſponding to their importance were allotted.

But while, in their original ſeats, ſuch partitions were annual, it was expedient that they ſhould now be inveſted in the poſſeſſor. A more enlarged idea of property had been gradually unfolding itſelf (3); and, though it was convenient to, and ſuited the views of a narrow community, to take back its land, the meaſure was not practicable in an extenſive ſociety. Nations were no longer to ſhift their habitations. The boundaries of particular ſtates were to be reſpected. The tribe ceaſing to wander, the individual was alſo to be ſtationary. The lot or partition now received by him, was to continue in his poſſeſſion, and to be an object of his induſtry. He was to take root, if I may ſpeak ſo, in a particular ſpot. He was to beſtow on it his affection; it was to feed and to enrich him with its produce. His family were to feel an intereſt in his eſtate; his ſons were to ſucceed to him. Heirs were to fail in the blood of the pro-

prietor. It affected him, that the crown or a ſtranger ſhould poſſeſs the ſubject of his toils and attentions. The powers of ſale and donation came to be underſtood. The right of holding a landed territory with no limitation, and of diſpoſing of it at pleaſure, was known and prevailed.

The advantages of property open themſelves with time. They were not obſerved by the German in his woods. But, when he was no longer the member of a narrow community, and felt his unimportance in the extenſive kingdoms which aroſe on his conqueſts, when other profeſſions were to be exerciſed beſide that of the warriour, his attention turned from the public to himſelf. Ideas of intereſt preſſed in upon him on every ſide. He was no longer to act chiefly from appetite and paſſion. He was to look forward to diſtant proſpects. He was to buſy himſelf for advantages which were to arrive ſlowly, and which were often to elude his diligence. He had paſſed from the empire of manners to that of laws. Riches had become a ſource of diſtinction; and his mind was to be torn with cares, anxiety, and oſtentation.

When we mount up to the origin of cuſtoms, we are to be ſtruck with their ſimplicity. The lot or partition to the ſovereign was to conſtitute his *domains*. It was to ſupport his ſplendour, to defray the expences of government, and to maintain his houſehold. The lot or partition to the individual was

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to give riſe to *allodiality*. It was the land which was *free*, which was named *propriety*, in contradiſtinction to *tenure* (4); and, being ſtill the mark of a citizen, it ſubjected him, as in Germany, to the general obligation of taking arms in defence of the community (5).

But the domains of the ſovereign, and the lands of lot or partition to the people, could not exhauſt all the territory of a conqueſt. They were principal and natural objects of attention. Yet, after their appointment, there were much extenſive property, and many fair poſſeſſions. The antient maxims of the people did not allow them to ſeize theſe by a precarious occupation. Men, who had connected the property of land with the tribe, and not with the individual, could not conceive any title in conſequence of which they might arrogate poſſeſſions to humour their fancy, or to flatter their pride. Their antient notions continued their operation: The community was concerned with what no man could claim. The lands, accordingly, which were aſſigned neither to the ſovereign nor to the people, which formed not the domains of the former, nor the partitions of the latter, were the lands of the ſtate or the FISC. And, under this appellation, in fact, they are known in the codes of the barbarians (6).

Of the territories of this kind, the king, as repreſenting the ſtate, was to take the direction; and, in the grants and diſpoſal

of them, the barbarians were alſo to be aſſiſted by the uſages to which they had been accuſtomed in their woods.

A German ſtate comprehended a ſovereign, who acted for the intereſt of the community, chieftains, who governed in different diſtricts, and the maſs of the people. The ſovereign and the chiefs owed their rank or eſtimation, ſometimes to their birth, but oftener to their merits. The former was ambitious to ſupport, with luſtre, the honour he ſuſtained: The latter were ſtudious to deſerve his favour, and to vie with one another. The people, as they were ſtruck with the qualities of particular chiefs, ranged themſelves under their banners, and devoted themſelves to their fortunes. It was the great emulation of the chiefs to excel in the number and the courage of their retainers. This was the dignity which moſt attracted them, and the power they courted moſt. Theſe were their ornaments in peace, and their defence in war. In the field it was infamous in the chief to be ſurpaſſed in valour; it was infamous in the retainers not to equal the valour of the chief. To guard and to defend his perſon, and to aſcribe to his glory all their gallant acts, was their greateſt oath. The chief fought for victory; the retainer for the chief (7).

Theſe connections, and this ſubordination, followed the barbaric nations into their ſettlements. And here we may perceive the *foundations* of the feudal aſſociation.

But

But land, which was the tie that bound together the members of a feudal kingdom, had no concern in theſe appearances. The chief could not confer a landed property on his retainer, becauſe land had not yet deſcended to individuals. It obeyed, however, the order of nations; and the more *powerful* of the Gaulic and German communities had been in the practice of granting, under *military ſervice*, proportions of *territory* to *inferior* tribes. Communities were antiently the vaſſals of communities (8). Here then was the *eſſence* of the feudal grant.

Accuſtomed to this way of thinking, and to theſe inſtitutions, a German ſtate found itſelf in a province of the Romans. The ſovereign, from gratitude and intereſt, was diſpoſed to court the chiefs who were the aſſociates of his victories; and the chiefs were not inſenſible of their importance. The retainers were proud of their proweſs and their ſervices; and the chiefs were forward to ſhow their favour and affection to men who conſtituted their ſtrength. Land had begun to be detached from nations, and to be connected with *individuals*. And the conqueſt obtained was in danger from the turbulence of the times, and from new invaders.

The ſituation of a German ſtate which had acquired a ſettlement, produced thus the neceſſity of drawing cloſer the connection of the ſovereign and the chiefs, and of the chiefs and the people. Its antient uſages concurring with this ſituation, point-

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ed out the conduct to be purſued. The lands of the *fiſc* were the medium which was to operate the purpoſe that was ſo neceſſary. The ſovereign took the direction of theſe; hence poſſeſſions flowed to the chiefs, under the burden of preſenting themſelves in arms at the call of the ſovereign; hence the chiefs dealt out lands to their retainers, under the like injunction of continuing to them their aid (9); and thus a political ſyſtem was founded, which was to act in ſociety with infinite efficacy.

Of this ſyſtem the intention and the ſpirit were national defence, and domeſtic independence. While it called out the inhabitant and the citizen to defend his property and to ſecure his tranquillity, it oppoſed barriers to deſpotiſm. Growing out of liberty, it was to promote the freedom of the ſubject. The power of the ſovereign was checked by the chiefs, who were to form a regular order of nobility; and the ariſtocracy, or the power of the chiefs, was repreſſed by the retainers and vaſſals, who, conſtituting their greatneſs, were to attract their attention. The chief, who oppreſſed his retainers, was to deſtroy his own importance. It was their number and their attachment, which made him formidable to his prince and to his equals.

In this manner, I would account for the origin of the domains of the ſovereign, and of allodiality; for that of fiefs (10); and for the genius they diſplayed in their earlieſt condition. And this ſhort deduction may be ſufficient to exhibit a general idea of the ſtate of land among the barbaric tribes on their conqueſts.

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## SECTION II.

*Of the Property of the Women. The Dower, the Morgengabe, and the Marriage-portion. The Communication to the Women of the Powers of Succeſſion and Inheritance. The advancement of Manners.*

HAVING diſtinguiſhed the property of the men, it is fit I ſhould treat that of the women. I have obſerved, that, among the antient Germans, and the caſe, it is to be preſumed, is ſimilar in every rude community, the property of the land was inveſted in the tribe or nation. His proportion of corn was allotted to the individual by the magiſtrate, and correſponded to the number of his family, the degrees of his merit, and the importance of his ſervice. He derived, accordingly, no ſource of influence from the property of land. His chief, and almoſt only riches, conſiſted in cattle (1); and, in thoſe rude and remote times, the more powerful ſupported their hoſpitality and magnificence by war and violence. They collected their retainers, and committed incurſion and plunder upon neighbouring nations; and their ſtates diſcouraged not a practice which was favourable to the military virtues.

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In this ſituation, it is obvious, that no property could be poſſeſſed by the women (2). They had neither land nor cattle, and could demand no ſhare of the booty procured by robbery and depredation. While they remained in their virgin ſtate, they continued, therefore, in the families of which they were deſcended (3); and, when they paſſed, by marriage, into other families, their huſbands became bound to attend to and to provide for them. Hence the cuſtom recorded by Tacitus: 'Dotem non uxor ma-'rito, ſed uxori *maritus* offert.' On the death of the huſband, the wife received this proviſion; and, it was the object of it to render her alike independent of the houſe ſhe had left, and of that into which ſhe had entered (4).

This proviſion conſiſted, doubtleſs, of goods; and, even in this form, it is to be conceived, it diſcovered itſelf after the Germanic conqueſts. When time, however, refinement, and neceſſity, had taught the barbarians the uſes of wealth, and individuals were proud of acquiſitions in land, it aſſumed more enlarged appearances; and property opening to the women, they acquired a ſource of conſideration which they had not formerly known, and which was about to produce conſequences of no leſs moment to themſelves than to ſociety.

The *dos* or *dower* came to conſiſt in money and in land. It was to ariſe out of a perſonal eſtate, out of allodial property, or out of fiefs. With the widow, it remained during her life, and

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on her death it paſſed to the heirs of her huſband. In general, it was regulated by his deed. In ſome places it was governed by cuſtom. It was ſometimes conſtituted by ceremonies, which grew out of the particular ſituation of parties (5); and, when no private act had taken place, where no cuſtom directed, and where no peculiarity of ſituation prevailed, it was fixed and aſcertained by eſtabliſhed and ſtatutory laws (6).

Nor was it a *dower* only, that the huſband beſtowed on the wife. The morning after his nuptials, he made her a preſent, which was valuable in proportion to his generoſity and wealth. This acquiſition is known by the appellation of *morgengabe* (7); and, poſſeſſing it in full property, ſhe could convey it away during her life, allow it to paſs to her heirs, or diſpoſe of it by a deed, to take effect after death (8).

The experience of the uſes of property was to produce a ſolicitude to poſſeſs it. While the *dower* and the *morgengabe* gave diſtinction to the wife, the daughter was to know the neceſſity of acquiſitions, and to wiſh for them. The parent was to encourage her hopes, and to gratify his affections. He was to make her ſtate correſpond to his riches and his dignity. The refining intercourſe, and the riſing luxuries of ſociety, were to demand this attention. A portion was to go from the bride to the huſband. The perſonal fortune, to which the daughter had been a ſtranger in the days of Tacitus, made its appearance. And

wealth in the female ſex, joining itſelf to beauty and wit, contributed to ſupport and extend their dominion.

The cuſtom, in fact, of giving portions to the women, is to be traced to an early period in the laws of the Germanic and Celtic nations (9). The preſent, ſimple and ſlight in its origin, grew complicated and extenſive. It kept pace with luxury and opulence. The *dower*, which before was chiefly directed by the will of the huſband, became now a formal matter of treaty and agreement. The bride had a title to ſtipulate her claims. The riches ſhe brought, and her rank, were duly conſidered; and a proviſion in proportion to both were allotted (10).

The *portion* of the daughter, like the *dower* and the *morgengabe* of the wife, was originally to conſiſt of goods, and then of money. It was afterwards to conſiſt of land. But, when the father was firſt to beſtow land on the daughter, it is to be underſtood, that it was a part of his property, which was free or *allodial*. Fiefs, in their commencement, could not be enjoyed by the women. The actual ſervice of the ſhield was required from the vaſſal. To admit them to allodiality, was even a deviation from the ſpirit of the antient cuſtoms of the barbarians; and, it was only in the evolution of the rights of property, that they were permitted to acquire it. A *propriety* then, or an *allodial* poſſeſſion, might come to them by donation or by teſtament. But, by the rules of regular ſucceſſion, it was to go

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to the ſons; and, according to law, they were only to inherit, when there were to be no ſons, or when the ſons were to fail (11). The communication, however, of theſe privileges was a powerful addition to their importance, and was to lead to advantages ſtill greater.

The capacity to receive allodiality by grant, by gift, by teſtamentary deſtination, and to enter to it by ſucceſſion, in the event of the want of male heirs, or after their demiſe, introduced and foſtered the idea of their admiſſion to fiefs. As the original rudeneſs of the barbaric nations yielded to ſucceſſive improvements, as manners ſoftened, and the arts of peace were cultivated, the propenſity to add to their emolument, and to contribute to their pleaſure, grew ſtronger. If they could not march to the field, and charge an enemy at the head of their vaſſals, they might perform theſe offices by ſubſtitution. An approved warriour might diſcharge, for the female poſſeſſor of a fief, the military duties to which it was ſubject. A right to ſucceed to feudality was, by degrees, acknowledged in the ſex; and, when inveſted in the grant, they were to exert all its civil rights. Though they deputed its military command, they could ſuſtain its honours and prerogatives. They were to hold courts, and exerciſe juriſdiction in ordinary fiefs; and, while they attended to theſe cares in noble ones, they were alſo to aſſemble with the peers, in the great aſſemblies of the ſtate in every country of Europe, to deliberate, to vote, and to judge. Neither the

military ſervice incident to every fief, nor the obligation of attending the aſſembly of the peers or the council of the nation incident to fiefs, which were noble, could prevent the advancing condition of the women. The imbecillity of their nature, which gives a ſtrength to all their other attractions, made them fulfil the firſt duty by delegation: The laſt they were long to perform in perſon (12).

From the moment that ſettlements were made in the territories of Rome, the women were to improve in advantages. The ſubordinations of rank, which before had been chiefly diſcriminated by merit, were now marked more palpably by riches and property. Modes of a diſtant and reſpectful demeanour were invented. New ſentiments of dignity and meanneſs became known. Diſplays of elegance and luxury took place. The extent and order of eſtabliſhed kingdoms rendered men more domeſtic. Leſs engaged with the public, the female ſex engroſſed more ſtrongly their regard and notice. They approached them with greater reverence; they courted them with an aſſiduity that was more tender and anxious. The women, in their turn, learned to be more vain, more gay, and more alluring. They grew ſtudious to pleaſe and to conquer. They loſt ſomewhat of the intrepidity and fierceneſs which before were characteriſtic of them. They were to affect a delicacy, and even a weakneſs. Their education was to be an object of greater attention and care. A finer ſenſe of beauty was to ariſe. They were to abandon all employments

employments which hurt the ſhape and deform the body. They were to exert a fancy in dreſs and in ornament (13). They were to be more ſecluded from obſervation. A greater play was to be given to ſentiment and anticipation. Greater reſerve was to accompany the commerce of the ſexes. Modeſty was to take the alarm ſooner (14). Gallantry, in all its faſhions, and in all its charms, was to unfold itſelf.

But, before I can expreſs, with preciſion, the conſideration they attained, and perceive, with diſtinctneſs, the ſplendour which the feudal aſſociation was to throw around them, I muſt look for the extenſion of fiefs, and for the ſources of chivalry. Fiefs and chivalry were mutually to act upon one another. The feudal aſſociation was to direct and to foſter chivalry; and, from chivalry, it was to receive a ſupport or luſtre. They were plants which were deſtined to take root about the ſame period, and to ſympathiſe in their growth, and in their decline. The ſeeds of them had been gathered by the barbarian in his woods; and, to whatever ſoil or climate his fortune was to carry him, there he was to ſcatter them with profuſion.

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## SECTION III.

*The Grandeur conſequent on Property, and the Power of the Nobles. The Prerogative of private War, and its deſtructive Tendency. The Converſion of Allodiality into Tenure. The Extenſion and Univerſality of Fiefs.*

PROUD with victory, with riches, and with independence, the conquerors of the Romans ſeparated to enjoy their poſſeſſions and their grandeur. The chiefs continued, as of old, to poſſeſs a military authority and a civil juriſdiction (1). The prerogatives, which before they had arrogated as due to their merit, they now enjoyed as the holders of fiefs. In war they commanded their vaſſals and retainers, and they judged of their diſputes in times of peace. The inhabitants of their territories were ſoldiers and ſubjects. Their caſtles and houſehold bore a reſemblance to the palace, and the eſtabliſhment of the ſovereign. They had their officers and their courts of juſtice; and they exerciſed the powers of puniſhment and mercy (2). They even continued to exert the privilege of making war of their private authority; and the ſovereigns of Europe could behold ſubjects in arms, who infringed not their allegiance to the ſtate (3).

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This right of ſpreading, with impunity, the tumults of war, operated as the leading ſource of the diſorders of the middle ages, and marks expreſſively their condition and manners. It demands, of conſequence, an attention which I muſt refuſe, at preſent, to the other prerogatives of nobility; and, in order to diſcover its origin, I muſt glance at the beginnings of criminal juriſprudence.

In the early ages of ſociety, the individual depends for protection on himſelf. There is no tribunal to which he can appeal for redreſs. He retaliates, with his own arm, the inſult he has ſuffered; and, if he is unable, of himſelf, to complete his revenge, he engages his friends to aſſiſt him (4). Confederacies are formed for attack and for defence (5), and the members compoſing them are animated with the ſame paſſions. In this perturbed ſtate of mankind, the puniſhment of the offender is diſproportioned to his crime. Men, frantic with rage, are unacquainted with pity or with reaſon. The moſt barbarous actions, and the moſt cruel diſorder, are perpetrated and prevail. It is perceived, that the intereſt of the community is injured. Yet the right of revenge, ſo dangerous in the hand of the individual, cannot, without injuſtice, be torn from him. It is equitable that he be ſatisfied for the wrongs he has endured; but it is no leſs equitable, that the public do not ſuffer by his violence. He is allowed, accordingly, to gratify his reſentment, but through the power of the magiſtrate, who, while he feels for the

the injuries he has received, can alſo look with compaſſion to the criminal (6).

It is not, however, to be imagined, that this improvement takes place at once, and that every individual is, in the ſame moment, made to relinquiſh the exerciſe of his right of revenge. In rude times, the chief diſtinction among men ariſes from their perſonal qualities. Force of body, and vigour of mind, procure then to their poſſeſſors the greateſt attention and reſpect. A diſtinguiſhed warriour, or a chief, muſt be treated very differently from the vulgar; and, though the exerciſe of private revenge is to be raviſhed from the herd of the community, it is yet to continue in the juriſdiction of the great and the powerful. What is poſſeſſed by a few, grows in time a mark of honour, and a privilege of nobility (7).

Among the Germans, in the days of Tacitus, the exerciſe of the right of revenge had paſſed, in a great meaſure, from the multitude. It remained, notwithſtanding, with the chiefs; and they were not, on their conqueſts, in a diſpoſition to renounce ſo ſplendid a diſtinction. They enjoyed, as a prerogative, the exerciſe of a right, which is deſtructive to order and ſociety; and, in times when the art of legiſlation and government was only approaching to perfection, their claims were acknowledged. The freedom of revenge, at firſt unlimited, was confined; and the barons made war of their private authority (8).

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It is thus that this prerogative aroſe which filled Europe with confuſion. Nobles, haughty and independent, did not think of accepting a fine as a compenſation for an inſult, and ſubmitted not their diſputes to a judge. They brought them to the deciſion of the ſword; and, their vaſſals and retainers, entering into their ſentiments and feelings, partook of their glory and diſgrace. They were rivals whom nothing could unite, but the enemies of the ſtate, or the encroachments of the ſovereign. To repreſs theſe they could act with cordiality. But, in their uſual carriage to one another, they were ſullen, jealous, and proud; and, it was their chief employment to vie in diſplays of magnificence, or to try their ſtrength in hoſtility.

In the ſtate of tumult, bloodſhed, and oppreſſion, produced by the exerciſe of the prerogative of private war, a moſt important diſtinction was effected between the holders of fiefs, and the poſſeſſors of property. While, in the imperfection of government, the magiſtrate could not extend his power with equal force over all the orders of men in the ſociety; while the weak were expoſed to the inſults and the paſſions of the ſtrong; while nobles, haughty and independent, could legally proſecute their reſentments with the ſword, revenge their wrongs, and gratify their avarice and cruelty, the holders of fiefs enjoyed a ſupreme advantage over allodial proprietors. A Lord and his retainers, connected together in an intimate alliance, following the ſame ſtandard, and adopting the ſame paſſions, could act with concert and effi-

cacy. But allodial proprietors were altogether diſqualified to defend themſelves. Being diſtant and diſengaged, they could form and ſupport no continued or powerful confederacy; and the laws, in fact, did not permit them to enter into factions and hoſtilities. The violence of the times created an abſurdity. It gave to gifts under ſervice, and revertible to the grantor, a value ſuperior to lands which were held in full property, and at the diſpoſal of the poſſeſſor. It made neceſſary the converſion of *propriety* into *tenure*.

Nor was this the only conſideration which had weight with the poſſeſſors of property. In every monarchy, but in one more particularly that is governed by feudal ideas, rank and pre-eminence attract chiefly the attention, and excite the ambition of individuals. The king being the fountain of honour, and diſtinctions flowing from his favour, the ranks of men were nicely adjuſted; and, in proportion as they approached to his perſon, they exacted and received reſpect. From this principle it naturally proceeded, that allodial proprietors were treated with contempt. Holding by no tenure, and occupying no place in the feudal arrangements, they could not draw obſervation. Their pride was alarmed, and they wiſhed for the reſpect and the ſecurity of vaſſals.

Princes, bent on the extenſion of fiefs, diſcouraged theſe proprietors. Their ambition, their abilities, and their prerogatives, furniſhed

furniſhed them with the greateſt influence; and they employed it to give univerſality to a ſyſtem, which was calculated to ſupport the royal dignity and the national importance. Compoſitions for offences inferior to thoſe which were allowed to a vaſſal, were deemed ſufficient for the proprietors of allodiality. In the courts of juſtice they felt the diſadvantages of their condition. Mortified with regal neglect, without ſufficient protection from the laws, expoſed to the capricious inſolence and the deſtructive ravages of the great, diſguſted with rudeneſs, contempt, and indignity, they were driven into the circle of fiefs. They courted the privileges and the protection which were enjoyed by vaſſals. They ſubmitted their eſtates to tenure, ſelecting to themſelves a ſuperior the moſt agreeable, granting to him their lands, and receiving them back from him as a feudal donation (9).

In this direction of affairs, the extenſion of the feudal inſtitutions was unavoidable. The landed property was every where changed into feudality. The empire of fiefs was univerſal. Even land, the great ſource and medium of tenure, was to be inſufficient for the multitude of thoſe, who were preſſed to be vaſſals, by their wants and feebleneſs, and who were invited to be ſo by the great, in the wildneſs of their contentions, and amidſt the enormity and miſrule created by the exerciſe of private war. Every matter that was an object of profit, of pleaſure, of uſe, or of commerce, was to become the foundation of a fief. The right

of judging the delicts committed in a foreſt, the right of the chaſe or of hunting in a certain diſtrict, the tax on public roads, the privilege of eſcorting merchants to a fair or a market, offices of truſt and of juſtice, the ſwarms of bees in a woody territory, the profits of a mill, the fiſhing in a water, the allottment of a penſion, and other rights and poſſeſſions in ſtill wider deviation from the original grounds or doctrines of feudality, were to be held as fiefs (10). The imagination was exhauſted to invent new methods of infeudation. None could be too romantic or whimſical, while ſtrength or importance was derived from them to the grantors. The holders or vaſſals were bound to military ſervice, and ſubject to obligations; and the chief and the eminent, in conſequence of this policy, extended, ſupported, and maintained their public magnificence, their private conſideration, and the ruinous conflicts and animoſities in which they were involved by the paſſions of others, and their own.

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## SECTION IV.

*Arms, Gallantry, and Devotion. The origin of Knighthood and the Judicial Combat, of Torneaments and Blazonry. The Sources of Chivalry.*

WHEN the inhabitants of Germany ſallied from their woods, and made conqueſts, the change of condition they experienced produced a change in their manners. Narrow communities grew into extenſive kingdoms, and petty princes, and temporary leaders, were exalted into monarchs. The ideas, however, they had formerly entertained, and the cuſtoms with which they had been familiar, were neither forgotten nor neglected. The modes of thought and of action which had been diſplayed in their original feats, advanced with them into the territories of Rome, continued their operation and power in this new ſituation, and created that uniformity of appearance which Europe every where exhibited. Their influence on the forms of government and polity which aroſe, was deciſive and extenſive; and, it was not leſs efficacious and powerful on thoſe inferior circumſtances which join to conſtitute the ſyſtem of manners,

ners, and to produce the complexion and features that diſtinguiſh ages and nations.

The inclination for war entertained by the Germanic ſtates, the reſpect and importance in which they held their women, and the ſentiments they had conceived of religion, did not forſake them when they had conquered. To excel in war was ſtill their ruling ambition, and uſages were ſtill connected with arms. To the ſex they ſtill looked with affection and courteſy. And their theology was even to operate in its ſpirit, after its forms were decayed, and after Chriſtianity was eſtabliſhed. Arms, gallantry, and devotion, were to act with uncommon force; and, to the foreſts of Germany, we muſt trace thoſe romantic inſtitutions, which filled Europe with renown, and with ſplendour; which, mingling religion with war, and piety with love, raiſed up ſo many warriours to contend for the palm of valour and the prize of beauty.

The paſſion for arms among the Germanic ſtates was carried to extremity. It was amidſt ſcenes of death and peril that the young were educated: It was by valour and feats of proweſs that the ambitious ſignalized their manhood. All the honours they knew were allotted to the brave. The ſword opened the path to glory. It was in the field that the ingenuous and the noble flattered moſt their pride, and acquired an aſcendancy. The ſtrength of their bodies, and the vigour of their counſels, ſurrounded

ſurrounded them with warriours, and lifted them to command (1).

But, among theſe nations, when the individual felt the call of valour, and wiſhed to try his ſtrength againſt an enemy, he could not of his own authority take the lance and the javelin. The admiſſion of their youth to the privilege of bearing arms, was a matter of too much importance to be left to chance or their own choice. A form was invented by which they were advanced to that honour.

The council of the diſtrict, or of the canton to which the candidate belonged, was aſſembled. His age and his qualifications were inquired into; and, if he was deemed worthy of being admitted to the privileges of a ſoldier, a chieftain, his father, or one of his kindred, adorned him with the ſhield and the lance. In conſequence of this ſolemnity, he prepared to diſtinguiſh himſelf; his mind opened to the cares of the public; and the domeſtic concerns, or the offices of the family from which he had ſprung, were no longer the objects of his attention (2).

To this ceremony, ſo ſimple and ſo intereſting, the inſtitution of *knighthood* is indebted for its riſe. The adorning the individual with arms, continued for ages to characteriſe his advancement to this dignity. And this rite was performed to him by his ſovereign, his lord, or ſome approved warriour. In conformity,

mity, alſo, to the manners which produced this inſtitution, it is to be obſerved, that even the ſons of a king preſumed not to approach his perſon before their admiſſion to its privileges; and the nobility kept their deſcendants at an equal diſtance. It was the road, as of old, to diſtinction and honour. Without the advancement to it, the moſt illuſtrious birth gave no title to perſonal rank (3).

Their appetite for war, and their predatory life, taught the Germans to fancy that the gods were on the ſide of the valiant. Force appeared to them to be juſtice, and weakneſs to be crime (4). When they would divine the fate of an important war, they ſelected a captive of the nation with whom they were at variance, and oppoſed to him a warriour out of their own number. To each champion they preſented the arms of his country; and, according as the victory fell to the one or the other, they prognoſticated their triumph or defeat. Religion interfered with arms and with valour; and the party who prevailed, could plead in his favour the interpoſition of the deity. When an individual was called before the magiſtrate, and charged with an offence, if the evidence was not clear, he might challenge his accuſer. The judge ordered them to prepare for battle, made a ſignal for the onſet, and gave his award for the victor (5).

Nor was it only when his intereſt and property were at ſtake, that the German had recourſe to his ſword. He could bear no ſtain

ſtain on his perſonal character. To treat him with indignity or diſdain, was to offend him mortally. An affront of this kind covered him with infamy, if he forgave it (6). The blood of his adverſary could alone wipe it away; and he called upon him to vindicate his charge, or to periſh.

In theſe proceedings, we perceive the ſource of the *judicial combat*, which ſpread ſo univerſally over Europe, and which is not only to be conſidered as a precaution of civil polity, but as an inſtitution of honour (7).

Theſe nations, ſo enamoured of valour, and ſo devoted to arms, courted dangers even in paſtime, and ſported with blood. They had ſhows or entertainments, in which the points of the lance and the ſword urged the young and the valiant to feats of a deſperate agility and boldneſs; and in which they learned to confirm the vigour of their minds, and the force of their bodies. Perſeverance gave them expertneſs, expertneſs grace, and the applauſe of the ſurrounding multitude was the envied recompenſe of their audacious temerity (8).

Theſe violent and military exerciſes followed them into the countries they ſubdued, and gave a beginning to the *jouſts* and *torneaments*, which were celebrated with ſo unbounded a rage, which the civil power was ſo often to forbid, and the church ſo

loudly to condemn; and which, reſiſting alike the force of religion and law, were to yield only to the progreſs of civility and knowledge (9).

Unacquainted with any profeſſion but that of war, diſpoſed to it by habit, and impelled to it by ambition, the German never parted with his arms. They accompanied him to the ſenate-houſe, as well as to the camp, and he tranſacted not without them any matter of public or of private concern (10). They were the friends of his manhood, when he rejoiced in his ſtrength, and they attended him in his age, when he wept over his weakneſs. Of theſe, the moſt memorable was the *ſhield*. To leave it behind him in battle, was to incur an extremity of diſgrace, which deprived him of the benefit of his religion, and of his rank as a citizen (11). It was the employment of his leiſure to make it conſpicuous. He was ſedulous to diverſify it with *choſen colours*; and, what is worthy of particular remark, the ornaments he beſtowed, were in time to produce the art of *blazonry* and the occupation of the herald. Theſe choſen colours were to be exchanged into repreſentations of acts of heroiſm. Coats of arms were to be neceſſary to diſtinguiſh from each other, warriours who were caſed compleatly from head to foot (12). Chriſtianity introduced the ſign of the croſs; wiſdom and folly were to multiply devices; and ſpeculative and political men, to flatter the vanity of the rich and great, were to reduce to regulation and ſyſtem what had begun without rule or art.

It

It is thus I would account for knighthood, and the ſingle combat, for torneaments and blazonry; inſtitutions which were to operate with an influence not leſs important than extenſive. And, in the ſame diſtant antiquity, we meet the ſource of that gallantry and devotion, which were to mount them to ſo wild a height.

To the women, while he was yet in his woods, the German behaved with reſpect and obſervance. He was careful to deſerve their approbation; and they kept alive in his mind the fire of liberty, and the ſenſe of honour. By example, as well as exhortation, they encouraged his elevation of ſentiment and his valour. When the Teutones were defeated by Marius, their women ſent a deputation to that commander, to require that their chaſtity might be exempted from violation, and that they might not be degraded to the condition of ſlaves. He refuſed their requeſt; and, on approaching their encampment, he learned, that they had firſt ſtabbed their infants, and had then turned their daggers againſt themſelves (13). To ſome German women taken in war, Caracalla having offered the alternative of being ſold or put to the ſword, they unanimouſly made choice of death. He ordered them, notwithſtanding, to be led out to the market. The diſgrace was inſupportable; and, in this extremity, they knew how to preſerve their liberty, and to die (14). It was amidſt this fierceneſs and independency, that gallantry and the point of honour grew and proſpered. It was the reproach of theſe women, which,

on the banks of the Rhine and the Danube, filled the coward with the bittereſt ſorrow, and ſtained him with the moſt indelible infamy. It was their praiſe which communicated to the brave the livelieſt joy and the moſt laſting reputation. *Hi*, ſays Tacitus, *cuique ſanctiſſimi teſtes, hi maximi laudatores* (15).

Theſe notions did not periſh when the Germans had made conqueſts. The change of air, and of ſituation, did not enfeeble this ſpirit. The women were ſtill the judges of perſonal merit; and, to ſome diſtinguiſhed female, did the valorous knight aſcribe the glory of his atchievements. Her ſmile and approbation, he conſidered as the moſt precious recompenſe; and, to obtain them, he plunged into dangers, and covered himſelf with duſt and with blood. *Ah! ſi ma Dame me voyoit!* exclaimed the knight when performing a feat of valour (16).

Nor were arms and the attachment to women the only features of importance in the character of the German. Religion, which, in every age and in every nation, gives riſe to ſo many cuſtoms, mingled itſelf in all his tranſactions. He adored an inviſible being, to whom he aſcribed infinite knowledge, juſtice, and power (17). To profit by his knowledge, he applied to divination (18); to draw advantage from his juſtice, he made appeals to his judgment (19); and to acquire, in ſome degree, his power, he had recourſe to incantation and magic (20). The elements and the viſible parts of nature, he conceived, at the ſame time,

to

to be the reſidence of ſubordinate divinities, who, though the inſtruments only of the agency of the ſupreme intelligence, had a great ſuperiority over men, and were entitled to their attention and reverence (21). Every tree and every fountain had its genius; the air, the woods, the water, had their ſpirits. When he made a ſtep, or looked around him, he felt an impulſe of awe and of devotion. His anxiety, his amazement, his curioſity, his hope, and his terror, were every moment excited. The moſt ample ſcope was afforded by this theology for the marvellous. Every thing, common as well as ſingular, was imputed to ſupernatural agents. Elves, fairies, ſprights, magicians, dwarfs, inchanters, and giants, aroſe (22). But, while the leſſer divinities of theſe nations attracted notice, it was to the ſupreme intelligence, that the moſt ſincere and the moſt flattering worſhip was directed; and this god, amidſt the general cares which employed him, found leiſure to attend more particularly to war, and valued his votary in proportion to his courage. Thus religion and love came to inflame, and not to ſoften the ferocity of the German. His ſword gained to him the affection of his miſtreſs, and conciliated the favour of his deity. The laſt was even fond of obeying the call of the valiant; he appeared to them in battle, and fought by their ſide (23). Devotion, of conſequence, was not leſs meritorious than love or than valour (24). Chriſtianity did not aboliſh this uſage. It deſcended to the middle ages. And, to love *God* and the *ladies*, was the firſt leſſon of chivalry (25).

But,

But, though arms, gallantry, and devotion, produced the inſtitutions of chivalry, and formed its manners, it is not to be fancied, that they operated theſe effects in a moment; and that, immediately on the ſettlements of the barbarians, this fabric was erected. The conquerors of Rome continued to feel and to practiſe in its provinces, the inſtincts, the paſſions, and the uſages to which they had been accuſtomed in their original ſeats. They were to be active and ſtrenuous, without perceiving the lengths to which they would be carried. They were to build, without knowing it, a moſt magnificent ſtructure. Out of the impulſe of their paſſions, the inſtitutions of chivalry were gradually to form themſelves. The paſſion for arms, the ſpirit of gallantry, and of devotion, which ſo many writers pronounce to be the genuine offspring of theſe wild affectations, were in fact their ſource; and it happened, by a natural conſequence, that, for a time, the ceremonies and the uſages produced by them, encouraged their importance, and added to their ſtrength. The ſteps which marked their progreſs, ſerved to foſter their ſpirit; and, to the manners of ages, which we too often deſpiſe as rude and ignoble, not to political reflection or legiſlative wiſdom, is that ſyſtem to be aſcribed, which was to act ſo long and ſo powerfully in ſociety, and to produce infinite advantage and infinite calamity.

It is to thoſe only who apply to rude ſocieties the ideas of a cultivated aera, that the inſtitutions of chivalry ſeem the production

tion of an enlightened policy. They remember not the inexperience of dark ages, and the attachment of nations to their antient uſages. They conſider not, that if an individual, in ſuch times, were to ariſe of a capacity to frame ſchemes of legiſlation and government, he could not reduce them to execution. He could not mould the conceptions of ſtates to correſpond to his own. It is from no pre-conceived plan, but from circumſtances which exiſt in real life and affairs, that legiſlators and politicians acquire an aſcendency among men. It was the actual condition of their times, not projects ſuggeſted by philoſophy and ſpeculation, that directed the conduct of Lycurgus and Solon.

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## SECTION V.

*The Inſtitutions of Chivalry, the Pre-eminence of Women, Politeneſs, and the Point of Honour.*

FROM the ſtate of the feudal nobles, and the exertion of the right of private war, it reſulted, that the lower orders of men were courted and attended to in an uncommon degree. The military retainers of a noble, and the inhabitants of his lands, conſtituted his power; and it was not his intereſt to neglect men who might offer their ſervice to an enemy. They ſhared in his property and greatneſs, were flattered with his countenance, and formed the bulwark which ſupported him. His own ſons, thoſe of his vaſſals and tenants, and the ambitious youth whom his renown attracted from a diſtance, learned under his direction the art of war, fought his battles, and entitled themſelves to the honours of chivalry.

Every deſcendant of a gentleman, or every free-born perſon, had a capacity to bear arms, and to aſpire to knighthood: And a long train of ſervices prepared him to receive it. From his earlieſt

earlieſt years he attended the court, and reſided in the caſtle of his lord; and in this ſchool he acquired all the knightly virtues. The emulation of his equals, the example and admonitions of his chief, and the company of the ladies, from whoſe number he was to ſelect the accomplished fair one, to whom he was to aſcribe all his ſentiments and his actions, inflamed in him the paſſion for war, infuſed into his mind a zeal for religion, and inſtructed him in all the arts of a reſpectful gallantry. From the performance of domeſtic duties, which were the firſt that employed his attention, he was called to the management of horſes and of armour (1). He then entered into greater familiarity with his lord, and accompanied him in all his hazardous expeditions. He became accuſtomed to perils and to toils; he acquired, by degrees, the whole ſcience of attack and of defence; and, when his hard apprenticeſhip was over, he acted himſelf as a knight, and fought and wiſhed for ſtill ſeverer trials to exerciſe his ambition (2).

To adorn him with arms, was originally, as I remarked, the ſimple ceremonial which inveſted the warriour with knighthood. But greater pomp and ſolemnity came to expreſs his advancement to this dignity. Its importance had grown with time; the feudal inſtitutions had foſtered a taſte for ſplendour; and the Chriſtian clergy, who ſucceeded to the privileges of the Germanic prieſts, improving on their ambition, made religion interfere in its forms (3).

The candidate preſented himſelf in a church, where he confeſſed his ſins, and declared his repentance and remorſe. Abſolution was then given him, and he paſſed the night in watching and pious meditation. In the morning he heard maſs, and, approaching the altar, placed his ſword upon it, which was returned to him, with benedictions, by the hands of the prieſt. The euchariſt was next adminiſtered to him; and, having been bathed, to expreſs the purity which was neceſſary for the ſtate into which he was to enter, he was dreſſed in rich robes, and his ſpurs and his ſword were put on. He then appeared before his ſovereign or his chief, and, receiving a blow upon the neck, was dubbed a knight. This parade, courtly as well as ſacred, was concluded with feaſting and merriment (4).

The ſplendour, however, which accompanied the exaltation to knighthood, was proportioned to the wealth and the birth of the candidate. The ſame prodigal oſtentation and punctilious grandeur, attended not the inveſtiture of an inferior perſon, and the deſcendant of a feudal lord. The rich and the great diſplayed, on theſe occaſions, their magnificence, their ingenuity, and their taſte (5). To furniſh an aid, accordingly, to make his eldeſt ſon a knight, was one of the *benevolences* which were due to a feudal proprietor from his vaſſals; and, during the prevalence and purity of the Gothic manners, no contribution was paid with greater chearfulneſs. But while, in times of feſtival and peace, the admiſſion to this honour was thus ſtately and ambitious, a gentle

gentle ſtroke with a ſword was ſufficient, during war, to intitle to its privileges; and, in this form, in the day of a battle, or in the hour of victory, it was uſual to beſtow it, in order to reward the valiant, and to encourage proweſs (6).

When the warriour was promoted to knighthood, the company and tables of the ſovereign and the nobles were open to him; and in times, when perſonal qualities were the great ſources of renown and merit, no diſtinction was more conſiderable or important. It was permitted to him to wear gold, fur, and ſilk, and to ſurpaſs in the richneſs of his dreſs and arms. And, while his external appearance marked him out from inferior men, he was diſtinguiſhed in his own order by his enſigns-armorial, and the peculiarities of his blazonry (7). He had certain privileges in hunting; in executions for debt, it was not lawful to take his horſe and armour (8); and in the courts of law, fines beyond the uſual proportion were awarded to compenſate his wrongs. When a priſoner, and in the power of a conqueror, his rank preſerved him from an unworthy or ignominious treatment. His word or promiſe might be relied upon with the firmeſt aſſurance. Fetters and chains were only fit for the ignoble. When the chief, or the baron to whom he was more particularly attached, required not his aid, he might enter into the ſervice of another maſter. Penſions and preſents rewarded his prowels; and he was enriched by the ſhare he received in the ſpoils of an enemy, and by the ranſoms of his captives (9). His uſual appearance in the field was on

horſeback (10), attended by an eſquire; and, if his wealth ſo increaſed, that he could afford to have knights in his train, his ſovereign allowed him the uſe of a banner or a ſtandard like the barons, and, like them, he exerciſed a civil as well as a military juriſdiction (11).

Nor did his death terminate the honours which were paid to him. The ſolemnity and ceremonies of his funeral, expreſſed his merits and the public regrets. A monument was erected to him, and the ornaments with which it was embelliſhed, ſuiting his actions and hiſtory, inſpired his poſterity with a generous emulation. The ſword which he had carried to battle, the ſhield which had defended his body, and the other articles of his dreſs and armour, became the objects of reſpect and veneration. The moſt illuſtrious perſons courted their poſſeſſion, and churches were often eſteemed the only proper repoſitories of theſe attendants of his victories and valour (12).

Splendid with knighthood, of which the honour was ſo great as to give dignity even to kings and to princes, the generous and the aſpiring were received in every quarter with attention and civility. The gates of every palace, and of every caſtle, were thrown open to them; and, in the ſociety of the fair, the brave relieved the ſeverities of war, and fed their paſſion for arms. Though it was the ſtudy of the knight to conſult the defence and the glory of the ſtate, and to add to the ſtrength and the reputation

tation of his chief, yet the praiſe of his miſtreſs was the ſpring of his valour, and the ſource of his activity. It was for her that he fought and conquered. To her all his trophies were conſecrated. Her eye lighted up in his boſom the fire of ambition. His enterpriſe, his courage, his ſplendour, his renown, proclaimed the power and the fame of her perfections.

The women failed not to feel their dominion. The dignity of rank and its proprieties, the pride of riches, the rivalſhip of beauty, unfolded their excellence and charms. Their natural modeſty, the ſanctity of marriage, the value of chaſtity, improved with time and with Chriſtianity. The reſpectful intercourſe they held with the knights, the adoration paid to them, the torneaments at which they preſided (13), the virtues they inſpired, the exploits atchieved to their honour, concurred to promote their elevation and luſtre. To their enamoured votaries they ſeemed to be divinities; and toils, conflicts, and blood, purchaſed their favour and their ſmiles.

Placed out to general admiration, they ſtudied to deſerve it. Intent on the fame of their lovers, watchful of the glory of their nation, their affections were rouſed; and they knew not that unquiet indolence, which, ſoftening the mind, awakens the imagination and the ſenſes. Concerned in great affairs, they were agitated with great paſſions. They proſpered whatever was moſt noble in our nature, generoſity, public virtue, humanity, proweſs.

They

They partook in the greatneſs they communicated. Their ſoftneſs mingled with courage, their ſenſibility with pride. With the characteriſtics of their own ſex, they blended thoſe of the other.

Events, important and affecting, actions of generoſity, enterpriſe, and valour, exhibited in the courſe of public and private wars, were often employing their thoughts and converſation. And, in the ſeaſons of feſtivity and peace, the greater and the leſſer torneaments exerciſed their attention and anxiety (14). Theſe images of war were announced with parade and ceremony. Judges were appointed to determine in them, and to maintain the laws of chivalry; and they were generally ſelected from among the aged knights, who came in crouds to live over again the ſcenes they had acted, and to encourage and direct the intrepidity and the ſkill of the aſpiring youth. The combatants, entering the liſts ſlowly, and with a grave and majeſtic air, pronounced aloud the *names* of the ladies to whom they had vowed their hearts and their homage. This privilege they had obtained at the expence of many a gallant atchievement; and they were preſented by the fair ones with a riband, a bracelet, a veil, or ſome detached ornament of their dreſs, which they affixed to their helmets or their ſhields, and conſidered as the pledges of victory (15). Every ſignal advantage won in the conflicts, was proclaimed by the inſtruments of the minſtrels, and the voices of the heralds. Animated by the preſence of the ladies,

ladies, by the ſenſe of their former renown, and of that of their anceſtors, the champions diſplayed the moſt brilliant feats of activity, addreſs, and valour. And the ladies, entering into their agitations, felt the ardours of emulation, and the tranſports of glory (16). When the torneaments were finiſhed, the prizes were diſtributed with a ceremonious impartiality. The officers who had been appointed to obſerve every circumſtance which paſſed in the conduct of the combatants, made their reports to the judges. The ſuffrages of the ſpectators were collected. After ſerious deliberation, in which the moſt celebrated perſonages who were preſent were proud to aſſiſt, the names of the conquerors were pronounced. Ladies were then choſen, who were to preſent to them the ſymbols of victory; and, in theſe fortunate moments, they were permitted to imprint a kiſs on the lips of theſe fair diſpoſers of renown. Amidſt the contending praiſe of the judges and the knights, the muſic of war, and the ſhouts of the people, the victors were now conducted to the palace of the prince or the noble who exhibited the torneament. There, at the feaſt, which concluded their triumph, they were expoſed to the keen look, and the impaſſioned admiration of whatever was moſt accompliſhed in beauty and in arms. And, in the height of a glory, in which they might well have forgot that they were mortal, they employed themſelves to conſole the knights they had vanquiſhed, and aſcribed their ſucceſs to fortune, not to valour; diſplaying a demeanour complacent and gentle, diſarming

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envy by modeſty, and enhancing greatneſs by generous ſympathy and magnanimous condeſcenſion (17).

The operation of love and of glory, ſo powerful in the inſtitutions of which I ſpeak, was advanced and inſpirited by religion; and principles, the moſt efficacious in our nature, built the fabric of the Gothic manners. Devotion had characteriſed the barbarian in his woods. The god of war was propitious to the brave, the conſecrated ſtandard led to victory (18), and an immortality and a paradiſe took away its terrors from death (19). Chriſtianity, which looks with a ſovereign contempt to every other mode of faith, which holds out to the believer the moſt flattering joys, and which, not contented with haunting guilt with remorſe in the preſent ſcene, lifts it from its grave to torture it with eternal pains in another exiſtence; Chriſtianity, I ſay, was more calculated, than the ſuperſtitions of paganiſm, to impreſs the imagination and the heart (20). The rite of baptiſm taught the follower of Odin to transfer his worſhip to Chriſt. To defend Chriſtianity with his ſword and his life, became a ſacred vow, to which every knight was ambitious to ſubmit. He conſidered himſelf as a ſaint, as well as a hero; and, on the foundation of his piety, the ſucceſſors of St Peter were to precipitate the armies of Europe upon Aſia, and to commence the cruſades, thoſe memorable monuments of ſuperſtition and heroiſm (21). The lady, not leſs than the knight, was to feel the influence of this religion. Society was to be diſturbed with the ſublime extravagance

travagance of fanatics, who were to court perfections out of the order of nature. Mortifications, auſterities, and penances, were to be meritorious in proportion to their duration and cruelty. The powers and affections of the mind and the heart, were to ſicken and to languiſh in frivolous and fatiguing ceremonials. The eye of beauty was to ſadden in monaſteries and in ſolitude, or to light the unholy fires of a rampant prieſthood. The deity was to be worſhipped in abjectneſs and in terror, as if he contemned the works he had made, and took delight in human dejection and wretchedneſs.

But, while eccleſiaſtics, deſigning and ambitious, were to abuſe mankind by the means of this new faith, it was to be beneficial to manners by the purity of its moral. While it was to guard the ſexes from frailty, it invigorated the ſenſe of juſtice; and, in a period of diſorder and confuſion, taught the knight to be ſtrenuous in vindicating the wrongs of the injured. The weak and the oppreſſed, the orphan and the widow, had a particular claim to his protection. To diſobey their call, was to infringe a law of chivalry, and to incur diſhonour and infamy. He ſeemed, in ſome meaſure, to be entruſted with the power of the magiſtrate; and the faſhion of the times made him forward to employ his arm, and to ſpill his blood in the cauſe of innocence and virtue.

Thus war, gallantry, and devotion, conſpired to form the character of the knight. And theſe manners, ſo lofty and ſo romantic, were for ages to give a ſplendour to Europe, by directing the fortunes of its nations, and by producing examples of magnanimity and valour, which are unequalled in the annals of mankind. But their effects in policy and war, however conſpicuous, are of little conſideration, when compared with the permanent tone they communicated to ſociety. The ſpirit of humanity, which diſtinguiſhes modern times in the periods of war, as well as of peace; the gallantry which prevails in our converſations and private intercourſe; on our theatres, and in our public aſſemblies and amuſements; the point of honour which corrects the violence of the paſſions, by improving our delicacy, and the ſenſe of propriety and decorum; and which, by teaching us to conſider the importance of others, makes us value our own; theſe circumſtances aroſe out of chivalry, and diſcriminate the modern from the antient world.

The knight, while he acquired, in the company of the ladies, the graces of external behaviour, improved his natural ſenſibility and tenderneſs. He ſmoothed over the roughneſs of war with politeneſs. To be rude to a lady, or to ſpeak to her diſadvantage, was a crime which could not be pardoned. He guarded her poſſeſſions from the rapacious, and maintained her reputation againſt ſlander. The uncourteous offender was driven from the ſociety of the valiant; and the interpoſition of the fair was often

often neceſſary to protect him from death. But the courteſy of the knight, though due in a peculiar manner to the female ſex, extended itſelf to all the buſineſs and intercourſe of civil life. He ſtudied a habitual elegance of manners. Politeneſs became a knightly virtue; it even attended him to the field of battle, and checked his paſſions in the ardour of victory. The generoſity and the delicate attentions he ſhowed to the enemy he had vanquiſhed, are a ſatire on the warriours of antiquity (23). His triumphs were diſgraced by no indecent joy, no brutal ferocity. Courteous and generous in the general ſtrain of his conduct, refined to extravagance in his gallantry to the ladies, and the declared protector of religion and innocence, he was himſelf to be free from every ſtain. His rank, his duties, and his cares, made him aim at the perfection of virtue. His honour was to be as inconteſtable as his valour. He profeſſed the moſt ſcrupulous adherence to truth and to juſtice. And, the defects of civil government, and his perſonal independence, gave an uncommon value and propriety to his perſonal fidelity. The formalities of the ſingle combat, which were ſo ſcrupulouſly juſt, as to remove even the ſuſpicion of every thing unfair and diſhonourable, foſtered the punctilious nicety of his demeanour (24). To utter a falſehood, was an offence of which the infamy was never to be effaced. The culprit was degraded from knighthood; a puniſhment more terrible to the warriour than death (25). To give the lie to a knight was, of conſequence, to inſult him in a point the moſt tender; and, while he was careful to maintain

his integrity, and ambitious to entitle himſelf to its honours, he was ardent and forward to defend himſelf againſt an improper accuſation, and to puniſh the abuſer of his name. His delicacies on this head demand reſpect and commendation; yet the rigid moraliſt has been pleaſed to make them the object of his ridicule. His ridicule, however, is as abſurd as it is contemptuous. It applies not to the purer ages of chivalry, when honour was inſeparable from virtue; and, perhaps, it is unjuſt in every application, but when it refers to individuals, who, being foul with meanneſs, lay claim to the conſideration of probity and character, and inſolently appeal to their ſwords to ſupport their pretenſions.

A

# VIEW

OF

# SOCIETY IN EUROP,

IN ITS PROGRESS FROM RUDENESS TO REFINEMENT.

## BOOK II.

### CHAPTER I.

### Of the Spirit of Fiefs.

#### SECTION I.

*A Diſtinction in the Hiſtory of the Feudal Aſſociation. The Feudal Incidents. Their Advantages in one Situation. Their Diſadvantages in another. The Influence of theſe different Situations on Society and Manners.*

THE generoſity of the barbaric manners was to ſuffer by the growing propenſity to intereſt. Refinement and property were to open up the ſelfiſhneſs of mankind; and the feudal

feudal aſſociation, which was originally an exerciſe of bounty and gratitude, was to be a ſource of oppreſſion and wantonneſs. The fruits of love, amity, and friendſhip, were to become the foundation of diſcord and contention. The ſuperior and the vaſſal, the chief and the retainer, ſo intimately connected, and ſo fondly attached, were to be hoſtile to each other. Violence and corruption were to diſfigure ſociety; and ſcenes of ſplendour, liberty, and greatneſs, were to be ſucceeded by rapacity, oppreſſion, and meanneſs.

The diſtinction of theſe different ſituations, though neglected by the antiquary, the lawyer, and the hiſtorian, is yet a matter of the greateſt importance. It is, in ſome meaſure, the key to the hiſtory of modern nations. It will lead us to diſcover many miſtakes and miſapprehenſions which conceal and deform topics of the higheſt moment and curioſity. It will overthrow many poſitions which have perplexed and miſled the reſearches of the learned, and the reaſonings of the ſpeculative.

While the greatneſs and ſimplicity of thoſe manners, which the conquerors of Rome brought with them from their woods, continued to animate their poſterity, the feudal aſſociation was noble in its principles, and uſeful in its practice. The ſolicitudes, and the mercenary ſpirit which riſe up with commerce, were unknown, and the fulleſt ſcope was given to nature and the paſſions. The actions and conduct of men were directed by ſentiment

ment and affection. In the ardour of private confederacies, the general feelings of generoſity were augmented. The emotions of the heart increaſed their force by confinement. And the lord and the vaſſal were linked to each other in the cloſeſt connection. The arms and the zeal of his followers were the ſtrength and the bulwark of the chief or the ſuperior. The bounty and the power of the chief or the ſuperior, were the ſubſiſtence and protection of the followers or the vaſſals. Their intereſts and their paſſions were the ſame; and a conſtant communication of good offices kept alive their attachments.

The vaſſal, kneeling before his lord, and putting his hands into his, acknowledged him for his ſuperior; 'I become,' ſaid he, 'your man, from this day forward, for life, and limb, and 'earthly honour.' The lord, receiving him in his arms, gave him the kiſs, which beſtowed his countenance and favour. This rite, known under the appellation of *homage*, expreſſed ſubmiſſion and reverence on the part of the vaſſal, protection and defence on that of the lord. The oath of *fealty*, or the engagement of fidelity, was then pronounced. 'Hear this, my lord,' ſaid the vaſſal, 'I 'will be faithful and loyal to you, for the tenements I hold. So 'help me God and his ſaints (1).' They were exact to obligations in which were compriſed their intereſt, their glory, and their pleaſure. In every act of civil life, in peace and in war, they found alike the uſes and advantages of their union. In the caſtle of the lord, the vaſſal added to his retinue, and proclaimed his

his magnificence. In his court he aſſiſted in the adminiſtration of juſtice. In the field, he fought by his ſide, and covered his perſon with his ſhield. On the foundation of their connection, and of that of the land or fief, which the former beſtowed on the latter, a train of *incidents* were to ariſe, the unequivocal expreſſions of friendſhip and habitude, the tender and affectionate fruits of an intercourſe the moſt devoted and zealous.

While the grants of land were precarious, or for life, the ſuperior was fond to educate in his hall the expectants of his fiefs. And, when they deſcended to a ſeries of heirs, or in perpetuity, he was careful, on the death of the feudator, to take the charge of his ſon, and his eſtate. The former was a hope to him of future greatneſs. He protected his perſon, directed his education, and watched over his concerns. He felt a pride in obſerving his approaches to manhood, and delivered to him, on his majority, the lands of his anceſtor, which he had been ſtudious to improve. Theſe cares were expreſſed in the incident of *wardſhip*.

The vaſſal, on entering to his fief, conſcious of gratitude, and won with the attentions of his lord, made him a preſent. This acknowledgement, ſo natural, and ſo commendable, produced the incident of *relief*.

Grateful

Grateful for the paſt, and anxious for the future favour of his chief, the vaſſal did not incline to ally himſelf to a family which was hoſtile to him. The chief was ambitious to add to his power and ſplendour, by conſulting the advantageous alliance of his vaſſal. They joined in finding out the lady whoſe charms and whoſe connections might accord with the paſſions of the one and the policy of the other. This attention gave eſtabliſhment to the incident of *marriage*.

When the ſuperior was reduced to diſtreſs and captivity, in the courſe of public or of private wars, when he was in embaraſſment from prodigality or waſte, when he required an augmentation of means to ſupport his grandeur, or to advance his ſchemes and ambition, the vaſſal was forward to relieve and aſſiſt him by the communication of his wealth. On this foundation there grew the incident of *aid*.

When the vaſſal gave way to violence and diſorder, or when by cowardice, treachery, or any ſtriking delinquence, he rendered himſelf unworthy of his fief, the ſacred ties which bound him to his lord were infringed. It was neceſſary to deprive him of his land, and to give it to a more honourable holder. This was the origin of the incident of *eſcheat* (2).

Amidſt the contention of friendſhip, and the mutuality of mind which exerciſed and informed the lord and the vaſſal, there was

experienced a condition of activity, liberty, and happineſs (3). The vaſſals attended to the retainers who were immediately below them. In their turn, they were courted by the lords, whoſe ſtrength they conſtituted (4). And the lords gave importance to the ſovereign. A ſubordination was known, which was regular, compact, and powerful. The conſtituent parts intereſted in government (5), as well as war, were attentive, in their ſeveral departments, to the purpoſes of order and juſtice; and, in national operations, they acted with an union that made them formidable. Of this aſſociation, political liberty was the reſult. And, while this fortunate ſtate of things continued, the people, in every country of Europe, came in arms to their national aſſembly, or appeared in it by their repreſentatives (6).

Such, in a more particular manner, was the condition of the Anglo-Saxon period of our hiſtory; and the people, happy alike in their individual and their politic capacity, as men and as citizens, were to bear, more reluctantly, the oppreſſions of the Norman times. The impreſſion of their felicity was to deſcend down with vivacity, in the ſucceſſion of the earlier Norman princes, and to produce the moſt memorable ſtruggles for liberty.

Nor was it in England only that ſuch convulſions were experienced. The ſame injuſtice and oppreſſions which were to ſhake this nation, prevailed in every country of Europe, and gave a beginning

beginning to thoſe contentions which were to terminate in the deſtruction of their antient independence.

In this iſland alone, the valour and the fortune of its inhabitants were to teach freedom to revive in the midſt of tyranny. The barons and the people were to inform King John of his condition and their own; and to give thoſe leſſons of inſtruction to his ſucceſſors which they are never to forget without danger; and which a future tyrant was to confirm with his blood, while an injured nation made it to ſtream from the ſcaffold to atone an inſolent ambition, and violated laws.

Diſorders, which were to be felt throughout Europe, are not to be referred entirely to the rapacity and the adminiſtration of princes. There muſt be a cauſe more comprehenſive and general, to which they are chiefly to be aſcribed.

The original manners which the conquerors of the Romans brought from their foreſts, were to ſpend their force. The high ſentiments which had reſulted from the limited ideas of property, were to decay. The generous maxims of the feudal aſſociation, and the diſintereſted wildneſs of chivalry, were to ſuffer with time. Property was unfolded in all its relations, and in all its uſes. It became a diſtinction more powerful than merit, and was to alter the condition of ſociety. By ſeparating the intereſts of the lord and the vaſſal, it was to deſtroy for ever the principles

of their aſſociation; and the *incidents*, which, in a better age, had foſtered their friendſhip, were to feed their rage, and to prolong their animoſity. As their confederacy had been attended with advantages and glory, their diſaffection was marked with debaſement and ſubjection. Out of the ſweets of love, a fatal bitterneſs was engendered. Sufferance was to ſucceed to enjoyment; oppreſſion to freedom. Society and government were to be tumultuous and diſorderly; and diſeaſes and infirmities were to threaten their decay.

In the prevalence of property and of mercenary views, the *ward* of the infant vaſſal, which the ſuperior once conſidered as a ſacred care and an honourable truſt, was to be regarded in no other light than as a lucrative emolument. The acquiſitions of the vaſſal, which, in their ſtate of agreement and cordiality, were a ſtrength to the lord, ſeemed now to detract from his domains. He committed ſpoil on the eſtate which, of old, it was his pride to improve. He neglected the education of the heir. He gave repeated inſults to his perſon. The relations of the vaſſal were often to buy from the ſuperior the cuſtody of his perſon and his lands. This right was more frequently to be let out to exerciſe the rapacity of ſtrangers. The treaſury of princes was to increaſe with this traffic; and ſubject-ſuperiors were to imitate, as well from neceſſity as from choice, the example of princes (7). The heir, on his joyleſs majority, received the lands of his anceſtor; and, while he ſurveyed, with a melancholy eye, his

his caſtles, which bore the marks of neglect, and his fields, which were deformed with waſte, new grievances were to embitter his complaints, and to ſwell his paſſions.

The *relief*, which originally was no more than a preſent, at the pleaſure of the vaſſal, on his entering into the fief, was conſolidated into a right. An expreſſion of gratitude was converted into a debt and a burden. The ſuperior, before he inveſted the heir in his land, made an exaction from him, in which he had no rule but his rapacity. His demand was exorbitant and grievous. And if the heir delayed too long to extinguiſh this fine of redemption, or was unable to pay it, the ſuperior continued his poſſeſſion of the eſtate. Rigours, ſo humiliating and ſo frantic, produced clamour, diſcontent, and outrage. Mitigations were to be applied to them, and to prove ineffectual. Laws were to be made againſt them, and to be diſregarded (8).

The *marriage* of the vaſſal, which could not be abuſed while their aſſociation was firm and their intereſt mutual, became a moſt ruinous perquiſite, when their aſſociation was broken, and their intereſt diſcordant. The ſuperior could give his vaſſal in marriage to whom he pleaſed. This right he exerted as a property. It might be purchaſed from him by the vaſſal himſelf, or by a ſtranger. The marriage of the vaſſal, without the conſent of the ſuperior, involved the forfeiture of the eſtate, or was puniſhed with oppreſſive penalties. It was a rule, indeed, reſulting out

out of their former habitudes, that the heir ſhould not be married to his diſparagement (9). But this rule was overlooked amidſt the violence of the times. The ſuperior had no check but from his humanity, the vaſſal no relief but in remonſtrance.

This right, ſo mortifying to the male heir, was a ſtretch of ſtill wilder oppreſſion, and more ferocious cruelty, when exerciſed on the female ward. Her hand might be tendered at the will of the ſuperior. He might pay no attention to her affections. She was to ſubmit at his mandate to indecent embraces, unſanctioned with love. Her beauty was to loſe its ſweets, and her heart its enjoyments, to feed his avarice, and to gratify his whim. Her relations were often to buy from him a privilege ſo frightful; and the unfeeling tyrant was to paint the horrors of its exertion, to extort his demand (10).

The *aid* which, in happier times, the vaſſal beſtowed out of benevolence to relieve the diſtreſs, and to aſſiſt the grandeur of his lord, became a burden and a tax in the miſery of their diſaffection. It was arrogated as a duty and a tax. The lord called for an aid or contribution, when his eldeſt daughter was married, when his eldeſt ſon was made a knight, and when, having been taken in war, his own perſon was to be ranſomed. Theſe were eſteemed the legal occaſions when exactions could be made (11). But cuſtom and practice authoriſed the requiſition of aids on pretences the moſt frivolous. When the crown or the lord

lord was diſpoſed to be oppreſſive, they could find a reaſon for an *aid;* and wants, not his own, were to affect every moment the ſubſtance of the vaſſal (12).

While their confederacy was maintained, it was not on any ſlight foundation, that the fief could be taken from the vaſſal. Cowardice, diſhonour, treachery, or treaſon, were then the cauſes of *eſcheat.* The lord was not to be ſo offended with leſſer delinquencies, as to take poſſeſſion of the eſtate. In the times, however, of their diſagreement, the cauſes of forfeiture were to multiply, and he was to be active to enforce them. Treſpaſſes and trifles were to be ſufficient grounds for the ſeiſure of lands, of which the poſſeſſor was offenſive. The vaſſal held a precarious and dangerous territory; and, with a mind diſpoſed to be hoſtile to his chief, was to obſerve to him an attentive and punctilious demeanour. If he refuſed too long to attend the court of the ſuperior, and to give his oath of fidelity; if he happened to commit the ſlighteſt infringement of his oath; if he foreſaw any misfortune that was to befal his lord, and neglected to inform him of it; if, by any act, he was to affect the credit or the reputation of his ſuperior; if he ſhould chance to reveal any private circumſtance concerning him; if he ſhould grant an infeudation in any other form than that in which he held his own; if he ſhould make love to the wife or the daughter of his lord, or ſhould careſs his ſiſter, while yet a virgin and unmarried; theſe,

theſe, and reaſons ſtill more abſurd, were to forfeit the eſtate to the ſuperior, and to involve the ruin of the vaſſal, and that of his family (13).

A ſyſtem of oppreſſion the moſt deſtructive was thus eſtabliſhed; and, by a ſtrange peculiarity in the hiſtory of mankind, the ſame *incidents* were to act in the production of ſituations the moſt oppoſite. In one period, they were to encourage liberty and happineſs; in another, rapacity and ſavageneſs. Proſperity and vigour attended the feudal aſſociation in its youth. Its maturity was marked with peeviſhneſs and infirmities; and a croud of obſervers, being only to ſee it in this condition, were to miſtake its ſpirit, and to ſurvey it without enlargement.

The monks, who, on the revival of letters, preſumed to chronicle the tranſactions of men, looked to the paſt with the prejudices of their own times. They could know, and could comprehend, no manners but their own. The cultivated hiſtorian was to obſerve and to complain of their omiſſions; but, inſtead of labouring to ſupply them, he was only to arrange their materials, to hold out, with luſtre, ſome ſuperior names, and to give his narrative the charm of picture and ornament. The lawyer and the antiquary were to be equally uninſtructive; while the former confines his remark to the legiſlation and the practice of his own age; and while the latter, amuſing himſelf in the ſearch of dates and of trifles, ſeeks not to advance into any

any general views, or to catch the ſpirit of thoſe antient periods, which provoke his ſweat and his toil.

The uſages and cuſtoms which the barbaric tribes brought from their woods, the remote ſource of all their laws, tranſactions, and eſtabliſhments, were to be obſerved with a tranſient regard. They are, notwithſtanding, the ſure guides which are to direct the inquirer in the darkneſs and obſcurity of the middle times. They point to, and evince the diſtinction that is now made in the hiſtory of the feudal aſſociation. And, they are to lead to other diſtinctions of curioſity and uſefulneſs.

## SECTION II.

*A Diſtinction in the Hiſtory of Arms and Chivalry. The Sovereign is conſidered as the Fountain of Honour. The Epoch of the Grandeur of Chivalry. The Decline of Fiefs. The Remedy for their Recovery. The Invention of Knight-ſervice. The Knight's Fee. The Diſtinction between the Knight of Tenure and the Knight of Honour. Fiefs under Knight-ſervice.*

THE decline of the Gothic manners, while it affected ſo ſtrongly the feudal aſſociation, did not fail to extend its influence to chivalry and arms. Every poſſeſſor of a fief conferred, of old, at his pleaſure, the dignity of knighthood; and every perſon who had been admitted to knighthood, had a title to beſtow it. But, when the feudal connection was infringed, and its generous principles were deſtroyed, the feudatory was diſpoſed no longer to ſeek out the meritorious whom he might advance to an honour, which was to be an advantage, and to reflect a glory to his ſuperior. He was now the enemy, not the friend of his lord, and wiſhed neither to add to his ſplendour in peace, nor to his power in war. He had grown more ſelfiſh with time,

time, and the knowledge of property. He was to avoid, not leſs from intereſt than paſſion, the having knights in his train. The right which it had been his pride to exerciſe, he regarded with coldneſs. And, what the poſſeſſor of the fief was careleſs to beſtow, the ſimple knight did not pertinaciouſly arrogate as a prerogative. The prince or ſovereign, from whom it had always been the greateſt favour to receive this dignity, came, by degrees, excluſively to confer it. At the head of the ſtate and of arms, he was to be conſidered as the fountain of honour.

The diſtinction of knighthood, accordingly, did not immediately fall in the declenſion of the feudal aſſociation. It felt, indeed, the ſhock which ſeparated the intereſts of the ſuperior and the vaſſal; but, ſurviving its impulſe, it was to riſe, for a time, in height and ſplendour. When in the creation only, and at the diſpoſal of the Prince, it was to acquire a value from his greatneſs. It was to be given, for a ſeaſon, with more choice and reſerve, than when at the will of the poſſeſſor of the fief, and of the ſimple knight. Higher feats of proweſs, the poſſeſſion of greater wealth, more illuſtrious deſcent, were to be required in its candidate. This was the epoch of its luſtre and renown. Heralds, ſkilful in pedigrees and armories, were to multiply. The duel was to improve in ceremony and parade; torneaments were to advance in magnificence; and, a court of chivalry, extenſive in its juriſdiction, was to regulate deeds of arms, and uſages of war (1).

But, while the feudal aſſociation in its decline was thus to contribute to the elevation of the antient chivalry, by threatening its ruin, it was to produce effects of ſtill higher importance, and of an operation not leſs univerſal. It was to give a new appearance to fiefs, and a more regular form to the feudal militia. It was to protract the fall of a ſyſtem already ruinous, to create new diſorders, and to lead to new eſtabliſhments.

Though the cordiality of the lord and the vaſſal was decayed, the grant of land from the former to the latter continued its obligations. The vaſſal was held by a tie, which he could not renounce without forſaking his importance. His property and ſubſiſtence faſtened him to an enemy. His paſſions and his duties were at variance. He might hate the perſon of his lord, but he was to bow to him as his ſuperior. The grant of land he enjoyed, bound him to the performance of military ſervice. With a cold heart, he was to buckle himſelf in his armour; and, with reluctant ſteps, he was to follow the march of his chief. Of old, it had been his fondeſt attention to carry all his ſtrength againſt an enemy, that he might diſplay his own greatneſs, and add to the magnificence of his ſuperior. He now furniſhed unwillingly the leaſt aſſiſtance in his power. The fervour of his former conduct was never more to advance the meaſures of ambition. And, in this ſtate of things, the feudal militia was to obſtruct and retard, rather than to forward the operations of princes.

In

In the heart of a populous kingdom, and ſurrounded with ſubjects accuſtomed to arms, the feudal ſovereign was thus to feel an unnatural weakneſs. A malady, ſo formidable, could not but produce an anxiety for its cure. And, what is no leſs certain than peculiar, in the different countries of Europe, the ſame remedy was applied to it.

Fiefs, or the grants of land under military ſervice, had advanced from being annual to be for life; and, from being donations for life, they were to proceed to be hereditary. It was before the eſtabliſhment of this ultimate point in their progreſſion, that the happineſs of the feudal aſſociation was diſturbed. And, it was the eſtabliſhment of this point which was to afford the opportunity to princes of recovering, in ſome degree, their greatneſs. While the cordiality of the vaſſal was maintained, a *general* obligation of military ſervice was ſufficient to induce him to marſhal all his force in the field. When this cordiality was deſtroyed, policy was to extort what his generoſity and attachment had conferred. Lands were to be burdened with a *full* and exact proportion of ſoldiers. The giving them out in perpetuity was the ſeaſon for annexing this burden. An expedient, natural, and not to be oppoſed, ſuggeſted itſelf. The tenure of *knight-ſervice* was invented.

A portion of land, of which the grant, by the agreement of the giver and the receiver, entitled to the ſervice of a ſoldier or a knight,

knight, was a *knight's fee.* An eſtate, of two hundred fees, furniſhed, of conſequence, two hundred knights. Manours, baronies, and earldoms, were thus powerful, in proportion to their extenſiveneſs. The grants from the ſovereign to the nobles claimed the ſervice of ſo many knights; and the ſub-infeudations of the nobles enabled them to perform this ſervice (2). The tenants of the crown who were not noble, had alſo their fees, and furniſhed proportionally their knights. Grants *in capite*, or from the ſovereign, and the ſub-infeudations of vaſſals, called out the force of the kingdom. The prince, the nobility, and the people, were in the capacities of a general, officers, and ſoldiers. A call to arms put the nation into motion. An army, numerous and powerful, could be aſſembled with expedition, exact in its arrangements, and in a ſtate for defence and hoſtility (3).

Such, I conceive, was the origin and nature of the tenure of knight-ſervice. And thus, in the hiſtory of the feudal inſtitutions, there are two remarkable periods; the epoch which preceded the invention of knight-ſervice, and the epoch during which it prevailed.

The knights produced by this tenure, differed moſt eſſentially from the knights of whom I have formerly ſpoken. But, though the train of thinking into which I have been led, points to their peculiarities with an obvious clearneſs, the miſtakes of grave

grave men, and an attention to perſpicuity, oblige me to expreſs their diſtinctive characters (4).

The one claſs of knights was of a high antiquity; the other was not heard of till the invention of a *fee*. The adorning with arms and the blow of the ſword, made the act of the creation of the antient knight; the new knight was conſtituted by an inveſtment in a piece of land. The former was the member of an order of dignity which had particular privileges and diſtinctions; the latter was the receiver of a feudal grant. Knighthood was an honour; knight-ſervice a tenure. The firſt communicated ſplendour to an army; the laſt gave it ſtrength and numbers. The knight of honour might ſerve in any ſtation whatever; the knight of tenure was in the rank of a ſoldier.

It is true, at the ſame time, that every noble and baron were knights of tenure, as they held their lands by knight-ſervice. But the number of *fees* they poſſeſſed, and their creation into rank, ſeparated them widely from the ſimple individuals, to whom they gave out grants of their lands, and who were merely the knights of tenure. It is no leſs true, that the ſovereign, without conferring nobility, might give even a ſingle fee to a tenant; and, ſuch vaſſals *in capite* of the crown, as well as the vaſſals of *ſingle* fees from a ſubject, were the mere knights of tenure. But the former, in reſpect of their holding from the crown, were to be called to take upon themſelves the knighthood

hood of honour; a condition, in which they might riſe from the ranks, and be promoted to offices and command. And, as to the vaſſals *in capite* of the crown, who had *many* fees, their wealth, of itſelf, ſufficiently diſtinguiſhed them beyond the ſtate of the mere knights of tenure. In fact, they poſſeſſed an authority over men who were of this laſt deſcription; for, in proportion to their lands, were the fees they gave out, and the knights they commanded (5).

It was, in this manner, that the tenure of knight-ſervice came to recover the feudal militia, at a time when it was periſhing in weakneſs. But, though it bound more cloſely, in the connection of land, the ſuperior and the vaſſal, by the fixedneſs of the ſervice it enjoined, it could not bring back their antient cordiality. It gave a ſtrength and conſiſtency to the military department of the feudal inſtitutions; but it removed none of their civil inconveniencies and burdens. Theſe, on the contrary, were to increaſe during its prevalence. It was to brace, only, with a temporary vigour, a ſyſtem which no prudence or art could accommodate to refining manners.

The *incidents*, which had grown with the progreſs of fiefs, ſtill continued their operation. Every grant by the tenure of knight-ſervice, was attended with homage and fealty, and was expoſed to wardſhip and relief, to marriage, aid, and eſcheat. The ſuperior had ſtill his pretenſions and his claims; the vaſſal was ſtill

to

to ſuffer and to complain. Promiſes of the relaxation of the feudal perquiſites, were to be made by princes, and to be forgotten. Legal ſolemnities of reſtraint were to be held out, and, occaſionally, to produce their effect. But, palliatives, feeble or forced, were not to controul the ſpirit of the ſyſtem and the times. Fiefs, while they ſuſtained, in the tenure of knight-ſervice, the grandeur of the European ſtates were waſting with internal debilities. And the eye, in ſurveying their ſtrength and magnificence, can trace the marks of an approaching weakneſs and decline.

# CHAPTER II.

*The Progreſſion of Fiefs. The Beneſice, the Fief, and Allodiality. Different Opinions on theſe Topics. The Fruits of the Fief. Its Perpetuity. The Æra of Hereditary Fiefs. Knight-ſervice. Particular Applications to the Hiſtory of England. Doubts concerning the Introduction of the Feudal Law into England. A Solution of them. Of Fiefs under William the Norman. A Diſtinction concerning their Condition in the Anglo-Saxon and the Anglo-Norman Times. The repeated Demands for the Revival of the Laws of Edward the Confeſſor. An Explanation of this Difficulty. The Introduction of Knight-ſervice into England. Of the Number of Knight-fees there.*

I HAVE endeavoured to inveſtigate the riſe and nature of the feudal grant, and the varying ſpirit of the feudal aſſociation; I have attempted to diſtinguiſh the chivalry of arms, and the chivalry of tenure; and, I have ventured to open up the origin of knight-ſervice, which was to place the feudal inſtitutions in their laſt, and moſt intereſting ſituation. It is now fit

I ſhould mark the different periods in the progreſſion of fiefs, expreſs, in one view, their birth, growth, and maturity, and enter into applications of the reaſonings I have made. The uſe of my principles will thus be confirmed. And, in performing this taſk, I foreſee I muſt alſo meet with errors and prejudices, which the talents of ingenious men have conſecrated; but of which, it is the tendency to load hiſtory with difficulties, and to perplex ſcience with doubt.

In the manners of the antient Germans, I have found the ſource and ſpirit of the feudal laws. To theſe, the grant of land under military ſervice has a certain and deciſive reference. Its appearance, at the will or pleaſure of the grantor, was even a conſequence of the limited ideas of property, and of the forms and regulations which directed the condition of land while theſe nations remained in their woods. They could have no conception, on their conqueſts, of a gift of land in perpetuity; becauſe, of ſuch gifts they had no knowledge. The object of the grants then made, was military ſervice; their duration was the pleaſure of the grantor; and the ſpreading of ſuch donations through the different orders of the ſtate, from the ſovereign to the chiefs, and from the chiefs to the retainers, connected together the inhabitants of a kingdom.

But

But the new ſituation of the barbarians on their ſettlements, and the natural advancement of manners, were to communicate to them ideas of property. Their continued occupation of allodial lands, exhibiting the uſe and conveniencies of a permanent poſſeſſion, eſtabliſhed the notion of it. They perceived, by compariſon, the diſadvantages of the lands under military ſervice, which were revokable at the call of the donor. A year, therefore, and then the life of the vaſſal, became the terms of the enjoyment of theſe gifts (1). They grew to be ſucceſſive. The rights of the father were to be reſpected, and his ſervices to be remembered in his poſterity. And, in this condition of them, the ſuperior might chooſe, out of the family of the feudatory, the ſon the moſt valiant, and the moſt acceptable to him (2). The perpetuity of the grant was next to be underſtood. The prior readineſs and capacity of the eldeſt ſon to do its duties, were to eſtabliſh primogeniture and hereditary ſucceſſion. And the firm connection of the property in the deſcendants and blood of the proprietor, had produced an intereſt in the daughter, and, on the failure of male heirs, made the land inheritable to women.

During all this progreſs, the term *beneſice*, and, during a part of it, the term *fief*, were to expreſs theſe donations. Even after the grants of land had become hereditary, they were to continue to expreſs them. Theſe names, of conſequence, have a reference to the ſame cuſtoms and the ſame inſtitutions.

There

There are yet authors, who affirm that the benefice and the fief were different ; and, when they only mean, that the *beneſice* denoted the grant in its ſtate of fluctuation, and the *fief* its condition of perpetuity, their diſtinction is frigid ; for theſe were ſteps in the progreſſion of the ſame law. But, in another aſpect, their diſtinction is a mark of a more cenſurable inattention ; for they ought to have known, that authentic monuments of hiſtory have repeated examples of the uſe of *beneſice* and *fief* in expreſſing a gift of land under military ſervice, and under a hereditary right (3).

There are writers more deceitful than theſe, who are not afraid to contend, that the *beneſice* was *allodiality*, or the land which was free and capable of alienation. The proofs, however, which evince the connection between the words *beneſice* and *fief* deſtroy this notion ; and there are laws and records of the barbarians which make an actual diſtinction between the allodial and the beneficiary lands, which allude to the extenſive condition of the former, and the unalienable ſtate and the military ſervice of the latter (4).

From the grant at diſcretion to the hereditary eſtate, benefices or fiefs were to know the rites of homage and fealty. For the vaſſal, from the moment of his admiſſion to the protection of the ſuperior, was to make an acknowledgement of his ſubmiſſion and reſpect, and to give an aſſurance of his ſervice and fidelity.

fidelity. He was alſo to be ſubject to the feudal incidents or caſualities. For, from the earlieſt times of the feudal grants, the ſuperior was to find it neceſſary to educate in his hall the expectants of his fiefs, or his future vaſſals. To this care he was even to be led oftner, and with greater attention, when the fief was precarious, and for life, than when it was to paſs down in ſucceſſion; and the law, and not his choice, was to point out to him the infant heir. In every period of the advancement of the fief, the ſuperior was to receive a preſent or relief on the grant of his land; he was to have a concern in the marriage of his vaſſal; he was to be aſſiſted by his bounty or aid; and, on his delinquence, he was to revoke or take back the donation (5.)

There are writers, notwithſtanding, of diſtinguiſhed penetration, and of extenſive learning, who are confident and certain that theſe things were the fruits of the *perpetuity* of the fief; and, I am ſenſible, that the tribe of lawyers, who copy one another from generation to generation, have embalmed this fancy in their ſyſtems (6). But it is altogether impoſſible, that the *perpetuity* of the fief could act in their creation. For, at the period it diſcovered itſelf, the feudal aſſociation had loſt its cordiality. The ſuperior and the vaſſal were in a ſtate of hoſtility; and, in this ſituation, a train of rites and incidents could not poſſibly be created, which ſuppoſe protection and reverence, generoſity and friendſhip. Theſe rites and incidents were to diſtinguiſh thoſe early and fortunate periods,

periods, when the intereſts of the ſuperior and the vaſſal were the ſame, and their paſſions mutual; and, though they preſerved their exiſtence down to melancholy times, and were to act as cauſes of oppreſſion, they had yet foſtered the nobleſt principles of our nature. After throwing a luſtre on human affairs in one condition of manners, they were to degrade them in another. They were to feel the influence of refinement and ſelfiſhneſs; and, in this laſt ſituation, the perpetuity of the fief, which theſe writers conſider as their ſource, was to add a regularity to their appearance, and to encourage their ſeverity.

From the conqueſts of the barbarians, till the ninth century, fiefs were in their ſtate of fluctuation. It was about the year 877 (7) that the perpetuity of the fief was eſtabliſhed in France. And it was known in every country of Europe in the commencement of the tenth century.

The tenure of knight-ſervice was ſoon to follow the perpetuity of the fief, and was connected with it. There is, accordingly, an inſtance of a knight-fee in the 880 (8). In the reign of Hugh Capet, who was raiſed to the throne in the year 987, this tenure extended itſelf over France; and, after having appeared in other nations of Europe, it was introduced into England. But, in this laſt country, there are peculiarities concerning the beginnings and the progreſs of fiefs, which have been the ſubject of fruitleſs inquiries and conjectures. I muſt not, therefore,

fore, paſs them over in ſilence. If my principles are juſt, they ought to diſſipate the darkneſs which covers a portion of our hiſtory ſo memorable and ſo important.

Many learned writers are poſitive, that the Anglo-Saxons were ſtrangers to fiefs, and that theſe were introduced into England by William Duke of Normandy (9). There are writers not leſs learned, who affirm, that fiefs were not introduced into England by the Duke of Normandy, but prevailed among the Anglo-Saxons in the condition in which they were known under William (10). Great men range themſelves on each ſide of the queſtion, and I will not detract from their merits. But, it will be permitted to me to expreſs my ſentiments.

It cannot be true, that the Saxons, who ſettled in England, were ſtrangers to fiefs. For, in this caſe, they muſt have renounced the manners to which they had been accuſtomed in Germany. They muſt have yielded to views different from all the other Gothic tribes who made conqueſts. They muſt have adopted new and peculiar cuſtoms. And hiſtory has not remarked theſe deviations and this diſſimilarity.

It cannot be true, that William the Norman introduced fiefs into England. The introduction of a ſyſtem ſo repugnant to all the inſtitutions which uſually govern men; which was to force into an uncommon direction both government and property;

which was to hold out new maxims in public and in private life; which was to affect, in a particular manner, inheritance and eſtates; to give a peculiar form to juſtice and courts; to change the royal palace, and the houſeholds of gentlemen; to overturn whatever was fixed and eſtabliſhed in cuſtoms and uſages; to innovate all the natural modes of thinking and of acting; could not poſſibly be the operation of one man, and of one reign.

Let us not be deceived by names and by authorities. Fiefs were to run the ſame career in England which they had experienced in the other countries of Europe. They were to be at pleaſure and annual, for life, a ſeries of years, and in perpetuity; and, in all theſe varieties, they were to be exhibited in the Anglo-Saxon period of our ſtory. The hereditary grant, as well as the grant in its preceding fluctuations, was known to our Saxon anceſtors. Of this, the conformity of manners which muſt neceſſarily have prevailed between the Saxons, and all the other conquering tribes of the barbarians, is a moſt powerful, and a ſatisfactory argument. Nor is it ſingle and unſupported. Hiſtory and law come in aid to analogy; and theſe things are proved by the ſpirit and text of the Anglo-Saxons laws, and by actual grants of hereditary eſtates under military ſervice (11).

It is, at the ſame time, not leſs true, that the ſtate of fiefs in England, under William the Norman, differed moſt eſſentially from

from their condition among the Anglo-Saxons. The writers, therefore, who contend that they exiſted in the ages previous to Duke William, in the ſame form in which they appeared after his advancement to the crown, are miſtaken. For, under the Anglo-Saxon princes, no mention is made of thoſe feudal *ſeverities* which were to ſhake the throne under William and his ſucceſſors. Yet fiefs, under the Anglo-Saxons, in every ſtep of their progreſſion, muſt have been connected with thoſe feudal *incidents* which were the ſources of theſe ſeverities.

This difficulty, which, on a ſlight obſervation, appears to be inexplicable, will yield to my principles. The varying ſpirit of the feudal aſſociation, which I have been careful to remark, accounts for it in a manner the moſt eaſy and the moſt natural. When the ſuperior and the vaſſal were friends, and their connection was warm and generous, the feudal incidents were acts of cordiality and affection. When they were enemies, and their connection was preſerved, not by the commerce of the paſſions and the heart, but merely by the tie of land, the feudal incidents were acts of oppreſſion and ſeverity. During the Anglo-Saxon times, the affectionate ſtate of the feudal aſſociation prevailed. During the times of Duke William, and his immediate ſucceſſors, their hoſtile condition was experienced. Hence the mildneſs and happineſs of our Saxon anceſtors; hence the complaints and grievances of our Norman progenitors.

This ſolution of a difficulty, which has been a fruitful ſource of miſtake, is ſtrongly confirmed by a peculiarity which I am now to mention, and which, in its turn, is to lead to the explication of a problem that has been alike perplexing to our antiquaries and hiſtorians.

It was from Duke William, down to King John, that the people of England were to complain loudly of the feudal ſeverities; and, during this long period of outrage and lamentation, it was their inceſſant deſire, that the laws of Edward the Confeſſor ſhould be reſtored. It is, therefore, beyond all doubt, that the feudal ſeverities were not heard of during the times of King Edward. The ſuperior and the vaſſal were then cordial and happy in each other. The feudal incidents were then expreſſions of generoſity and attachment.

But Duke William, who was to acknowledge, by his laws, the freedom of the Engliſh government, which he was to inſult by his adminiſtration, enacted, that the poſſeſſors of land ſhould not be harraſſed with unjuſt *exactions* and *tallages* (12). He thus promiſed an alleviation of the feudal ſeverities. And, what ſeems conſtantly to have attended this promiſe, he formally reſtored and confirmed the laws of the Confeſſor (13). In alluſion to the ſame ſeverities, William Rufus engaged to abſtain from illegal aids and oppreſſions; and, in reference to the ſame cuſtoms of the Confeſſor, he became bound to govern by mild and

ſanctified

ſanctified laws (14). Henry I. executed a celebrated charter, which contained direct mitigations of the feudal incidents, and he expreſsly reſtored and confirmed the laws of King Edward (15). Stephen gave a charter of liberties to the barons and people; and it was its purpoſe to beſtow his ſanction on the grant of Henry, and to confirm the good laws and cuſtoms of the Confeſſor (16). With the ſame intentions, a charter of liberties was framed and granted by Henry II. (17).

Theſe grants, though invaluable as ample and deciſive teſtimonials of our antient liberties, by their perpetual and anxious retroſpection to the Saxon times, could not be carried into execution, and maintained in the purity of their intentions. The altered condition of manners, and of the feudal aſſociation, did not permit their exerciſe. Notwithſtanding the high and independent ſpirit of the Engliſh nation, which occaſioned theſe grants, the feudal ſeverities were to continue. They prevailed under Duke William, under Rufus, under Henry I. under Stephen, and under Henry II. They were known under Richard I. And, in the age of King John, they became ſo exorbitant and ſo wild, from the eccentric and thoughtleſs nature of this capricious and deſpicable prince, that the barons and the people confederated to vindicate their liberties, and produced the *magna charta*, which, while it offered a limitation of the feudal rigours, was to be declaratory of the conſtitutional freedom that had diſtinguiſhed this fortunate iſland from the earlieſt times (18).

This

This conſtant connection of the complaints of the feudal ſeverities, and the revival of the laws and cuſtoms of the Confeſſor, from the age of Duke William to King John, is a moſt remarkable and important peculiarity. 'What theſe laws were, of 'Edward the Confeſſor,' ſays Mr Hume, 'which the Engliſh, 'every reign, during a century and a half, deſired ſo paſſionate-'ly to have reſtored, is much diſputed by antiquarians; and our 'ignorance of them ſeems one of the greateſt defects in the an-'tient Engliſh hiſtory (19).'

The train of thinking into which I have fallen, points, with an indubitable clearneſs, to the explanation of this myſtery. By the laws or cuſtoms of the Confeſſor, that condition of felicity was expreſſed, which had been enjoyed during the Anglo-Saxon times, while the feudal incidents were expreſſions of generoſity and friendſhip. Theſe incidents, in the fortunate ſtate of the feudal aſſociation, acting alike to public and private happineſs, produced that equal and affectionate intercourſe, of which the memory was to continue ſo long, and the revival to create ſuch ſtruggles. It was the cordiality, the equality, and the independence of this ſociety and communication, which are figured by the laws or cuſtoms of the Confeſſor, and which made them the fond objects of ſuch laſting admiration, and ſuch ardent wiſhes (20).

But,

But, while the times of Duke William and his ſucceſſors were diſcriminated from thoſe of the Confeſſor and the Anglo-Saxon princes, by the different ſtates they diſplayed of the feudal aſſociation, there is another circumſtance in the progreſs of fiefs, by which they were to be diſtinguiſhed more obviouſly.

Knight-ſervice, which, in France, and in the other kingdoms of Europe, was introduced in the gentle gradation of manners, was about to be diſcovered in England, after the ſame manner, when the battle of Haſtings facilitated the advancement of William the Norman to the crown of the Confeſſor. The ſituation of the Anglo-Saxons in an iſland, and the Daniſh invaſions, had obſtructed their refinement. In the memorable year 1066, when they loſt King Edward, and acquired Duke William, they knew the perpetuity of the fief; but they were altogether ſtrangers to knight-ſervice and a knight's fee. The duchy of Normandy, when granted to Rollo by Charles the Simple, in the year 912, had yet experienced all the viciſſitudes of fiefs. And William, being the ſixth prince in the duchy, was familiar with the moſt extended ideas of the feudal ſyſtem. Theſe he brought with him into England, and they were to govern and direct his conduct.

The followers of Harold having forfeited their eſtates, they reverted to the crown. An immenſe number of lordſhips and manours being thus in the diſpoſal of William, he naturally gave

gave them out after the forms of Normandy. Each grant, whether to a baron or a gentleman, was computed at ſo many fees; and each fee gave the ſervice of a knight. To the old beneficiary tenants, he was to renew their grants under this tenure. By degrees, all the military lands of the kingdom were to ſubmit to it. And, with a view, doubtleſs, to this extenſion, the book of Domeſday was undertaken, which was to contain an exact ſtate of all the landed property in the kingdom. Inſtead, therefore, of bringing fiefs into England, this prince was only to introduce the laſt ſtep of their progreſs, the invention of the knight's fee, or the tenure of knight-ſervice.

In fact, it is to be ſeen by his laws, that he introduced *knight-ſervice*, and not *fiefs*. Nor let it be fancied, that this improvement was made by his ſingle authority and the power of the ſword. His laws not only expreſs its enactment in his reign, but mention that it was ſanctioned with the conſent of the common council of the nation. It was an act of parliament, and not the will of a deſpot, that gave it validity and eſtabliſhment (21).

The meaſure, it is to be conceived, was even highly acceptable to all orders of men. For, a few only of the benefices of the Anglo-Saxon princes being in perpetuity, the greateſt proportion of the beneficiary or feudal tenants muſt have enjoyed their lands during life, or to a ſeries of heirs. Now, the advancement

vancement of ſuch grants into hereditary fiefs, under knight-ſervice, was an important advantage and acquiſition. While it operated to the convenience and the grandeur of the ſovereign, it bettered the property, and ſecured the independence of the ſubject.

But, while it is to be thought, that knight-ſervice was introduced into England in the times of Duke William, and extended over it to a conſiderable degree, it is not, I believe, to be found with certainty, how many fees or knight-ſervices were created in his reign. Ordericus Vitalis has, indeed, affirmed, that William created ſixty thouſand knight-ſervices or fees (22). But a very different ſtate of this matter is given by Alexander, Archdeacon of Shrewſbury, a diligent officer of the exchequer, in the days of Richard I. King John, and Henry III. He mentions it as a tradition in his day, that, under Duke William, the number of fees in England amounted only to thirty-two thouſand. Of this, however, he could find no proof in any record (23). The diſcrepancy between this report, and the teſtimony of Ordericus Vitalis, is ſo great, that no reliance is to be given to either of them. And, though Mr Madox, Mr Hume, Sir William Blackſtone, and many writers, are diſpoſed to adopt the relation of the latter, there ſeems not any convincing reaſon in its favour. For, independent of the tradition of the Archdeacon of Shrewſbury, which affects it ſo violently, it is obſervable, that the knight-fees muſt have been in a ſtate of conſtant fluctua-

tion under Duke William; and that, in the darkneſs of time, it is impoſſible to find out the number of the laſt fee which was granted by him. The fluctuation in the number of fees continued alſo under his immediate ſucceſſors. For, it was not till about the end of the reign of Henry II. that all the allodial property of England was converted into tenure (24). And, from the adminiſtration of William till this period, there muſt have been a gradual augmentation of the fees and the knights.

It may now be a ſpeculation, neither incurious nor unuſeful, to attend to fiefs in the ſtate of their completion, and to remark the military power they eſtabliſhed.

CHAP-

# CHAPTER III.

## Of the Military Power of a Feudal Kingdom.

### SECTION I.

*An Idea of the Feudal Militia.*

WHEN the feudal aſſociation was cordial, there exiſted no neceſſity for the knight's fee. The vaſſals of a chief gave with pleaſure their aſſiſtance. When this aſſociation was diſcordant, different intereſts actuating the ſuperior and the vaſſal, art and policy were to preſcribe the exact ſervice to be performed. Nothing was to be left to friendſhip and cordiality. A rule, certain and definite, pointed out the duties of the vaſſal. This rule was the tenure of knight-ſervice.

A duchy, barony, or earldom, were the eſtates poſſeſſed by the nobles; and, being divided into fees, each of theſe was to ſup-

ply its knight. A tenant of the crown, who was not created into nobility, but enjoyed a grant of land, furniſhed alſo his knights in proportion to his fees. The nobles and the gentry of a feudal kingdom were thus its defenders and guardians. And they granted out territory to perſons inferior to them in the diviſions of fees, and under the burden of knights. In proportion, therefore, to the extent of its lands, there was, in every feudal ſtate, an army, or a body of militia, for its ſupport and protection.

But, while a force, numerous and ſufficient, was, in this manner, created, a care was alſo beſtowed to hold it in readineſs to take the field. The knights, who were to appear in proportion to the fees of each eſtate, were bound to aſſemble at a call, in complete armour, and in a ſtate for action (1). The feudal militia, of conſequence, could be marched, with expedition, to defend the rights of its nation, to ſupport its honour, or to ſpread its renown.

The uſual arms of a knight were the ſhield and helmet, the coat of mail, the ſword, or the lance (2). It was, alſo, his duty to have a horſe. For, a growing luxury, and the paſſion for ſhow, encouraged by torneaments, had brought diſcredit to the infantry, which had diſtinguiſhed the barbarians in their original ſeats, and facilitated their victories over the Romans (3). The horſemen were called the *battle*, and the ſucceſs of every engagement

gagement was ſuppoſed to depend upon them. No proprietor of a fee, no tenant by knight-ſervice, fought on foot. The infantry conſiſted of men, furniſhed by the villages and the towns in the demeſnes of the prince or the nobles. The bow and the ſling were the arms of theſe; and though, at firſt, of little conſideration, they were to grow more formidable (4).

During the warmth of the feudal aſſociation, the military ſervice of the vaſſal was every moment in the command of the ſuperior. When their aſſociation was decayed, it was not to be depended on, and, when afforded, was without zeal, and without advantage. The invention of knight-ſervice, which was to recover, in ſome degree, the vigour of this connection, while it aſcertained the exact duty to be rendered, was to fix its duration. Each poſſeſſor of a fee was, at his own expence, to keep himſelf in the field during *forty days* (5). To this obligation, the great vaſſals of the crown were bound, and inferior proprietors were to ſubmit to it. When a ſingle battle was commonly to decide the fates and the diſputes of nations, this portion of time was conſiderable and important. And, if any expediency demanded a longer duty, the prince might retain his troops, but under the condition of giving them pay for their extraordinary ſervice (6).

Such was the military ſyſtem which, during a long period of time, was to uphold the power of the monarchies of Europe; a ſyſtem,

ſyſtem, of which it was the admirable conſequence, that thoſe who were the proprietors of the land of a kingdom, were to defend it. They were the moſt intereſted in its welfare and tranquillity; and, while they were naturally diſpoſed to act with union and firmneſs, againſt a foreign enemy, they were induced not leſs ſtrongly to guard againſt domeſtic tyranny. Their intereſt and happineſs, their pleaſure and convenience, urged them equally to oppoſe invaſions from abroad, inteſtine commotions, and the ſtretches of prerogative. A ſtrength, ſo natural, and which could never be exhauſted; a ſtrength, in which the prince was to have leſs authority than the nobles, and in which the power of both was checked by the numerous claſs of inferior proprietors; a ſtrength, which had directly in view the preſervation of civil liberty, ſeems, on a ſlight obſervation, the perfection of military diſcipline.

But, with all its appearance of advantage, this ſcheme of an army was incompatible with refining manners; and, in pointing out the cauſes of its weakneſs, we may ſee the ſymptoms of refinement they are to exhibit. A double curioſity is thus to conſole with its charms the anxiety of inquiries that are irkſome.

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## SECTION II.

*The Inefficacy of the Feudal Militia. The Fractions of a Fee. Its Members. Attempts to escape out of the Bondage of Fiefs. The Fine of Alienation. Substitutions of Service. Commutations of Service for Money. The Fine for the Neglect of Service. The Tenure of Escuage. The Rise of Stipendiaries, and the Necessities of Princes. Devices and Frauds to prevent the Service of Knights, and the Payments of Escuage. The Rise of Commerce.*

THE portion of land termed a *fee*, which was the foundation of knight-service, and on which there rose the mighty fabric of the feudal strength, was no sooner invented than it was to suffer. In the frittering down of feudal property by infeudations, the practice prevailed of dividing even a fee. Thus, there were some vassals who possessed the half of a knight's fee. There were others, who had the third, the fourth, or the fifth parts of a fee. Fractions of a fee, even to the thirtieth and the fortieth parts, were not uncommon (1). These particulars, so perplexing to the historians of modern times, seem incon-

inconſiſtent with the views of knight-ſervice, and require to be explained.

A fee could properly be divided into eight portions, and theſe were ſaid to be its *members*. They received this appellation, becauſe their proprietors were bound to perform the military ſervice, or the original purpoſe of the grant. All diviſions beyond theſe portions were improper; and their poſſeſſors, not being members of the fee, were to perform no ſervice. The queſtion ſtill recurs, how the members of the fee, or the proprietors of the eight portions, were to perform the ſervice of a knight? After the invention of knight-ſervice, the uſual term that the militia were to remain in the field was forty days. The eighth part of a fee, by this rule, gave a title to the eighth part of the ſervice of a knight. Its proprietor, of conſequence, took the field for five days, which was his proportion of the ſtipulated ſervice of the fee for forty days. The poſſeſſor of the half of a knight's fee was thus to give his attendance for twenty days: And, in this manner, the other members of the fee were to act (2).

The members of the fee had each the privileges of a manour, that is, juriſdiction, court, and uſage. Hence the multiplication, of old, of little manours. The proprietors of fractions, who were not members of the fee, had not the privileges of manours, but paid ſuit and attendance at the courts of the county or canton.

ton. The former were included in the ſyſtem of fiefs; the latter were thrown out of it, and their number was equally promoted by the anxious fondneſs of a father, who would provide for all his children, and by the ruinous prodigality of a ſpendthrift, who would relieve his neceſſities.

The fractions which were members of the fee, were to be a ſhock to the feudal militia, by diſpoſing to different perſons, the ſervice which a ſingle individual could perform with greater ſkill and addreſs. They were to be a ſource of weakneſs and diſorder. The fractions which were not members of the fee, were to haſten the period of the alienation of property.

Amidſt the wants created by ſociety and intercourſe, by ambition and pleaſure, the vaſſal, who held from the crown many fees under knight-ſervice, found it neceſſary, at times, to obtain from his prince the licence to let out a portion of them under a farm-rent, and not ſubject to military ſervice, nor to homage, wardſhip, relief, and the other feudal incidents (3). The land he retained was ſufficient to produce the number of knights which were required from him. No immediate prejudice was ſuppoſed to be done to the power of the ſovereign, or to the militia. And thus, entire fees, and great proportions of territory, were to eſcape out of the magic circle of feudality. They were to paſs from chivalry and tenure, to be ſubject to profits or preſtations by the year. Licenſes from vaſſals to their feudatories,

created alſo theſe converſions of fees into property. As deviations from a ſyſtem, they mark its decline; as attentions to property, they expreſs the propenſity to refinement and commercial manners.

Leaſes, in this form, were even to be made without the knowledge of ſuperiors. The intereſt of the vaſſal in the eſtate, ſo much greater and more intimate than that of the lord, was to carry him ſtill farther. Retaining a ſufficiency of land for the knights he was to furniſh, he was to venture on the ſale of particular fees. Encroachments made with this precaution, were to lead to encroachments more extravagant. Sales were to take place, without the reſervation of a property equal to the military ſervice to be performed by the vender. The attention of the lord was thus called forcibly to the acts of his vaſſal. Conſulting his intereſt and importance, he would permit of no ſales that had not the ſanction of his conſent. The uſages and doctrines of fiefs were in his favour. It was expedient for the neceſſitous vaſſal to act with his approbation. A bribe came to ſoften the ſeverity of the lord. The *fine* of *alienation* was eſtabliſhed. On the payment of this fine, the vaſſal might ſell and barter, not only a portion of his fees, but the whole of them (4).

Theſe peculiarities had power of themſelves to deſtroy the feudal militia. But other cauſes were to concur with them.

Men

Men of rank and fortune were to yield to an increaſing luxury. The love of eaſe made them wiſh an exemption from ſervice, and their pride produced a diſlike to the mandate of a ſuperior. The ſubſtitution of perſons to perform their duties, of which the idea was firſt ſuggeſted by the ſickneſs of vaſſals, and then familiar from the grants of fees to eccleſiaſtics, and their devolution to women, became a flattering expedient to the rich and the luxurious (5). The prince could not depend on the perſonal attendance of the nobles and the tenants *in capite*. Perſons, hired with a price or a penſion, were often to diſcharge their offices, and to diſguſt troops, who were to ſubmit reluctantly to their command.

Subſtitutions of this ſort, however, though they came to be very common, were a matter of delicacy and attention. For the condition of ſociety in the feudal ages permitted not, at all times, the wealthy and the noble to delegate the authority over their vaſſals. But, when in a ſituation ſo critical, they were not without reſources.

It had been uſual, from the earlieſt times, for the ſuperior to levy a fine from the military tenant who refuſed to take the field at his ſummons (6). This ſuggeſted, very naturally, the commutation of ſervice for money. A new method of tenure was thus to ariſe. The vaſſal by knight-ſervice might convert his holding into the tenure of *eſcuage*, which, inſtead of exacting

knights for the fees of his eſtate, required him to make payments to the exchequer of his prince (7).

While this averſion from ſervice was to prevail, troops were yet to be neceſſary. The fine, accordingly, which the ſovereign demanded from the vaſſal who neglected to perform his duty, the payments he received by agreement from the tenants by eſcuage, and his intereſt to ſupply the attendance of both, were to produce, in every country of Europe, a multitude of *ſtipendiaries.*

Theſe forces were a mixture of all nations, and conſiſted of men, whom poverty and debauchery had corrupted into wretchedneſs. They had no ſolicitude what cauſe they were to defend; and their convenient ſwords obeyed, at all times, the donatives of princes. They were called *coterelli*, from the hangers they wore, *ruptarii*, from the pay they received, and many of them being of the country of Brabant, the term *Brabançons*, or *Brabantini*, came to expreſs them (8).

The introduction of theſe banditti into a feudal army, was the utmoſt violence to its nature. It offended infinitely the barons and the military tenants, that they ſhould be called to mingle with perſons ſo ignoble. Yet, the princes of Europe, finding the advantages of troops whom they could command to their purpoſes, and march at their will, were diſpoſed to encourage them.

them. They perceived, that they could poſſeſs no power without mercenaries; and no mercenaries were to be had without money. Hence the paſſion for wealth they were to diſcover; hence their ruinous projects to acquire it.

But, while the ſtruggles for money, thus created, were to produce conſequences diſtant and important, they ſerved to deſtroy altogether the purpoſes of knight-ſervice. They gave a mortal ſtab to the feudal militia. The feudal aſſociation was to be foul with diſguſts, oppreſſions, and diſorders. Time, and the devices of art, augmented the general confuſion. The barons and tenants *in capite* by knight-ſervice, when ſummoned to take arms, were often to diſpute the number of their fees, and the knights they ſhould furniſh. The tenants by eſcuage made proffers of the half or the third of the payments to which they were bound. The conſtables and the marſhals of armies were ill qualified to decide concerning matters, ſo delicate in their own nature, and in which an impropriety of conduct might be a prejudice to their ſovereigns. Doubts were to ariſe, not only about the fees or the knights of eſtates, but about the tenure by which they were held (9). The clergy were to invent, and to encourage frauds. They taught the laity to convey to them their feudal poſſeſſions, and to receive them back as property. The fees in their own enjoyment they affected to hold in frankalmoigne, or by a tenure that gave no ſervice but prayers (10). The ſubdiviſions of knight-fees created perplexities that were intricate in no common

mon degree. Fines or payments were often to be demanded, not only for the fractions which were members of the fee, but for fractions which were not members (11). The conſultation of rolls and records, inquiſitions by jurors, and the examination of witneſſes or evidence, required a length of time, and a trial of patience, and were not to be always ſatisfactory. The ſovereign, in the mean time, was in haſte to march againſt an enemy. And he felt his weakneſs in the diminiſhed ranks of his army, in the abſtractions of his revenue, in the turbulent ſervice of the great vaſſals who obeyed his ſummons, in the coldneſs of thoſe who acted as ſubſtitutes, in the total want of diſcipline and of military knowledge in inferior orders, and in the limited time which the troops were to remain in the field.

To all theſe cauſes, the riſe of commerce is to be added. Its various purſuits, and its endleſs occupations, were to actuate the middle, and the loweſt claſſes of men, and to give the killing blow to a ſyſtem, of which the ruins and decline have an intereſt and importance that bring back to the memory its magnificence and grandeur.

CHAP-

# CHAPTER IV.

*The Fall of Chivalry as a Military Eſtabliſhment. The Knights of Honour loſe their Conſideration. Their Numbers and Venality. Wealth becomes a more ſolid Title to Knighthood than perſonal Merit. This Dignity is connected with the Poſſeſſion of a Fee. It ceaſes to be Honourable, and is made a Subject of Compulſion. Fines for the Exemption from Knighthood. The antient Chivalry diſappears on the Riſe of Regular Armies.*

ALL the ſplendour and advantages of the antient chivalry could not uphold the feudal militia. The dubbed knight, or the knight of honour, was to fall with the mere military tenant, or the knight of tenure. Chivalry was to decay as well as knight-ſervice. When they ceaſed to give a mutual aid and ſupport, they were ſoon to operate in a contrary direction, and to promote the decline of each other.

In the order of dubbed knights, there were neceſſarily a multitude of warriours, whoſe military renown had chiefly entitled them to the inveſtiture of arms, and whoſe accompliſhments were

were greater than their fortunes. Their knowledge in war, and the rank to which they were advanced by the ceremonial of knighthood, gave them the capacity of acting in all ſtations. Their poverty, ſplendid, but inconvenient, made them attach themſelves, in a more particular manner, to princes and nobles (1). From theſe they received penſions, and, in the houſeholds of theſe, they enjoyed and ſuſtained honours and offices. Men of rank were to vie with one another in their numbers and attachment. They became a part of the garniture, the magnificence, and the pride of nobility (2).

There were thus, in the declenſion of the feudal army, a ſociety of men, who could ſupply the perſonal ſervice and attendance of the luxurious and the great. A ſubſtitution of knights, in the place of the barons and vaſſals of the crown, was thence to prevail very generally. And, while knights were, in this manner, to wound deeply the military diſcipline and arrangements, they were to throw a contempt on knighthood by their numbers and venality. The change of manners, and the uſes of wealth, had tarniſhed the luſtre and the glories of the antient chivalry.

In the ſtate of its degradation, the long and hard apprenticeſhip to arms which, of old, had prepared the candidate for the ſtruggles and the cares of knighthood, was forgotten. The poſſeſſion of a portion of land was to be ſufficient to give a title to this

this dignity. It was annexed to a knight's fee. The unaccomplifhed proprietor of a few acres was to be adorned with the fword, and to be admitted to the ceremonies of knighthood. But he could not hold its honours. They had paffed away for ever. The order, which had ennobled kings, and greatnefs, fupreme power, and the loftieft acquirements, grew to be mean and trivial.

The afpiring and the meritorious who, of old, courted and expected knighthood, with the moft paffionate ardour and the fondeft hope, were now to avoid it with anxiety, and to receive it with difguft. An unhappy exertion of prerogative was to add to its humiliation. Princes, to uphold their armies, were to iffue frequent proclamations, which required all the military tenants of the crown to appear before them on a certain day, and to be girt with the belt of knighthood (3). Having ceafed to be an object of choice, it was to be made a fubject of compulfion. A fingle knight's fee held of the crown, being deemed an ample enough fortune to entitle to knighthood, its poffeffor, if unwilling to accept this dignity, was compelled to receive it (4). Senility, irrecoverable weaknefs, and lofs of limbs, were the only excufes to be admitted for his refufal. If he had not thefe reafons to plead, and neglected to take the honour of knighthood, his eftate was diftrained by the officers of the revenue (5). Men were to buy, as a privilege, a refpite and an exemption from

knighthood; and princes, when they could not recover their armies, were to fill their exchequers (6).

In a condition, not merely of meanneſs, but of diſgrace and calamity, the antient chivalry could not exiſt long. It was worn out to extremity; and the military and regular eſtabliſhments to which the defects of the feudal arrangements pointed ſo ſtrongly, were to ſuperſede its uſes and advantages. It did not die, as ſo many writers have fancied, of the ridicule of Cervantes, but of old age, deſpondence, and debility.

# CHAPTER V.

## The Military Arrangements which prevailed in the Declenſion of Fiefs and Chivalry. The Introduction of ſtanding Armies.

### SECTION I.

*Of Mercenaries. The Evils which reſult from them. The Riſe of Taxations.*

THE mercenaries, which were made neceſſary by the diſorders of fiefs and chivalry, were to lead to misfortune and miſery. They were ſcarcely known, when the princes of Europe invented the art of extorting the wealth of their ſubjects, and of employing it to oppreſs them. While the lands dealt out by the crown created an effectual army, ſoldiers gave their ſervice for their poſſeſſions. But, when the inconveniencies and the defects of this ſyſtem had produced mercenaries,

the prince had no poſſeſſions to beſtow. His domains had gone away from him in prodigalities and donations. It was yet incumbent on him to maintain his troops. Money was abſolutely indiſpenſable to him, and he was to find out meaſures to procure it. Theſe meaſures are intereſting in themſelves, and ſtill more ſo in their conſequences. They gave riſe to taxations in Europe.

The vaſſals of the crown by knight-ſervice were obliged to perſonal attendance in wars; but, conſidering it as a burden, were diſpoſed to compound for it. This was alſo the caſe with the inferior tenants. They were no leſs inclined to contribute their proportions to their lords, than theſe were to ſatisfy their prince. To the prince, the money of his vaſſals was of more advantage than their ſervice; but agreements with each were fatiguing and endleſs; and his mercenaries were clamorous and impatient.

An expedient preſented itſelf, which, to all parties, gave the promiſe of eaſe and ſatisfaction. The prince, inſtead of the ſervice that was due, and, inſtead of contracting with every tenant who held from him, aſſeſſed a moderate ſum on every knight's fee throughout the kingdom (1). It was juſt that his tenants ſhould give a fine for their attendance; and what they furniſhed was to go to his mercenaries.

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The prerogative thus begun, was pregnant with misfortunes to ſubjects, and with advantages to princes, which were foreſeen neither by the former, nor the latter. What, at firſt, was a matter of expediency, and an expreſſion of the confidence of the people, and of the diſcretion of the ſovereign, grew into a moſt formidable taxation (2). It was to be exerted with no moderation or decency. In the delirium of their greatneſs, the princes of Europe were to fancy, that, in extracting money from their ſubjects, they ought to know no rule but their ambition, their wants, and their caprice.

In a conformity with the aſſeſſment on the eſtates ſubject to knight-ſervice, a tax was to be demanded from the poſſeſſors of land holden in frankalmoigne and in ſoccage (3). And I have already obſerved, that the tenants by *eſcuage* paid a ſtipulated fine for their fees. All the territory of a kingdom was thus to contribute to the neceſſities of princes, and the greateſt proportion of it was to be actually expoſed to their ravages.

Their rapacity was not yet to be ſatisfied. The cravings of ambition, and the prodigalities of mercenaries, demanded ſomething more. During the fortunate times of the feudal aſſociation, it had been common for the inhabitants of the cities and towns within the demeſnes of the ſovereign, and within thoſe of the nobility, to expreſs, reſpectively, by preſents, their ſubmiſſion, ſatisfaction, and gratitude. In more unhappy times, theſe gifts,

gifts, theſe fruits of generoſity, were demanded as a right. Theſe preſents, the expreſſions of happineſs, grew into tallages and exactions, and were to denote miſery and wretchedneſs. The prince, with an unbluſhing audacity, levied grants at his will from his cities and towns; and his example was followed by the nobles within the cities and towns within their territories. Hence the moſt deſtructive and the moſt calamitous of all the oppreſſions of the middle times (4).

Meaſures, ſo hoſtile to the free ſpirit of the Gothic governments, infringements of property ſo audacious, were every where to excite and to inflame the paſſions of the people. The princes of Europe were to contend for power, and their ſubjects for liberty. Struggles, the moſt critical and the moſt ſerious, were ſuſtained; and the progreſs of theſe, and the reſpective ſucceſs of the parties in the different kingdoms of Europe, were to alter its governments to the forms they maintain at this hour.

In France, and in other countries, the command of the mercenaries, and the power of taxation, were finally to prevail. In England, the frantic weakneſſes of King John, and the union of the nobles and the people, were to renovate the Gothic liberty, and to ſet limits to princes. While, in ſtates leſs fortunate, the kingly authority was to grow into deſpotiſm, and to debaſe the genius of men, while taxes, and tallages, and exactions, were to be demanded in wantonneſs and caprice, and a cruel tyranny

to

to diffuſe oppreſſion and grievance, the *magna charta* was to command, that no prince of England ſhould preſume to levy any tax, tallage, or exaction, without the conſent of the parliament (5); and that, while the land of the kingdom was to be free from his rapaciouſneſs, he ſhould not dare to harraſs its cities or towns, but that they ſhould return to the poſſeſſion and enjoyment of their *antient* liberties (6).

The diſorders of the feudal militia produced mercenaries, and the uſe of mercenaries gave birth to taxations. Taxations were begun to be levied, in all the ſtates of Europe, at the will of the prince. This occaſioned contentions between ſovereigns and their ſubjects. The victory of the kingly authority over the liberty of the people, continued in many princes the power of taxation; and this power, and the command of mercenaries, are the completion of deſpotiſm. In England, the prerogative of taxation which the prince had aſſumed, was wreſted from him by the great charter of liberties. He was to command his mercenaries; but he was to depend for their ſupport and their pay on the generoſity of his people.

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## SECTION II.

*The Difference between a Mercenary Soldier and a Feudal Vaſſal. Sovereigns find Troops by entering into Contracts with their Nobility, and with Captains by Profeſſion. Volunteers make an Offer of their Service. Commiſſions of Array. The Diſadvantages of theſe Military Schemes. The Idea and Eſtabliſhment of a Standing Force. France, and other Nations, loſe their Liberties. The Oppoſition to a Standing Force in England. The total Abolition of Fiefs. The conſequent Neceſſity of a Standing Army. The Precautions and Anxiety with which it is introduced.*

THE *Coterelli*, or banditti who wandered over Europe, and offered their ſwords to the higheſt bidder, introduced the idea that war might be conſidered as a trade. The feudal proprietor fought for his land and his nation, and the prince had no title to demand his ſervice in any diſpute of his own. He drew his ſword for the ſafety of the ſtate, or for its honour; but he was not bound to ſupport the quarrels of his ſovereign. When the feudal prince contended with a great ſubject, the feudal

dal vaſſals of the kingdom did not move indiſcriminately to his call. His defenders, in this ſituation, were his particular vaſſals, or the tenants of his demeſne. In like manner, if he declared war againſt a foreign ſtate, without the conſent of the great council of the nation, the majority of the feudal vaſſals might refuſe to obey his mandate. It was only in the wars, and in the quarrels approved by the nation, that they attended to his ſummons (1). But, when arms became a profeſſion, the ſoldier ſtipulated his ſervice for his pay. He conſulted not for what end he was to fight. An implicit obedience was required from him; and his ſword, though it might be employed againſt a natural and an active enemy, might alſo be turned againſt his native country, and give a ſtab to its repoſe and proſperity.

When, from the refuſe or the vagabonds of Europe, the taking money for ſervice was become familiar, the making war a traffic prevailed in every ſtate. The idle and the profligate found a way of life, which flattered their indolence and rapacity. The uſual method of collecting an army, was now by contracts with nobles, who had authority over the looſe and diſorderly inhabitants of their eſtates; with captains, whoſe addreſs or valour could allure adventurers to their ſtandards; and with individuals, whoſe poverty or choice made them offer themſelves to the conſtables and the marſhals of princes. Theſe troops, though more obedient than the Gothic militia, were not much ſuperior to them in diſcipline. For, at the end of every war,

the prince, on whom they depended for pay, was in haſte to diſband them (2).

But, while this grew to be the uſual method of raiſing an army, it was a law in the different nations of Europe, that all the ſubjects of a kingdom were bound to take arms in caſes of neceſſity. Statutes, accordingly, or ordinances, aſcertained the armour with which every perſon, in proportion to his riches and rank, was to provide himſelf, and which he was to keep conſtantly in his poſſeſſion (3). And thus, when dangers threatened, and ſudden invaſions took place, commiſſions of array were iſſued by princes, and ſupplies to the army called out from the provinces and counties, the villages and cities (4). The ſoldiers, levied in this manner, received alſo the pay of the prince.

Theſe ſchemes for a military power were ſtill imperfect. The oppreſſion of arrays was diſguſting and cruel in the higheſt degree; and the troops they furniſhed were ill diſpoſed to exert themſelves, and without diſcipline. Mercenaries were the ſtrength of armies; but, to collect ſuch multitudes of them as were requiſite for great and vigorous efforts, required an inexhauſtible revenue. They had, beſides, no principle of attachment or of honour. An object of terror to the people, and of ſuſpicion to the prince, they were employed and deteſted; and when the termination of a war ſet them looſe, the condition of Europe was deformed, and the greateſt diſorders were perpetrated.

trated. They had no certain homes, and no regular plan of ſubſiſtence. They were at the command of the turbulent and factious; they aſſociated into bands and companies, and were often ſo formidable as to maintain themſelves, for a time, in oppoſition to the civil authority. Robberies, murders, the raviſhment of women, and other atrocious crimes, were frequent (5). The contagiouſneſs of their example, and the enormities they produced, ſeemed incompatible with the exiſtence of ſociety; yet their uſe and their diſmiſſion were neceſſarily, in a great meaſure, to create this contagiouſneſs and theſe enormities.

Confuſions often lead to improvement, by demanding and pointing out a remedy. It was perceived, that the ſoldiery ought to be maintained or kept up, not only in times of war, but of peace. They would thus be preſerved from maroding, and plunder, and riot; and, improving in diſcipline, they would act with greater firmneſs and efficacy.

The creation of a ſtanding force, of which the idea was thus unfolded, was alſo facilitated by the rivalſhip which had prevailed between France and England. From the time that William Duke of Normandy had mounted the throne of England, the two kingdoms entertained a jealouſy of one another. The dominions which the Engliſh were to poſſeſs on the continent, being a ſource of conſideration to them there, became the foundation of diſquiets and animoſities, which were ready to break

out on occaſions the moſt trifling. Frequent wars putting to trial the ſtrength and reſources of the rival ſtates, ſerved to improve them in arts and in arms. Even the victories of Edward III. and Henry V. while they brought ſo much ſtrength and glory to England, were to be leſſons of inſtruction to the other ſtates of Europe, by diſcovering the danger which muſt reſult to all of them from the encroachments of a power ſo mighty and ſo ambitious. The battles of Creſſy, Poictiers, and Azincourt, which ſeemed to bring nothing but honour and advantage to the Engliſh, were the prognoſtics of their humiliation. And, while France was apparently in a ſtate of deſperation, it was to recover its importance and grandeur. The maid of Orleans was to aſtoniſh with the wildneſs of her heroiſm; Charles VII. was to exert his political ſagacity; Dunois, his military ſkill. The domeſtic diſcords of France were to ceaſe; and the Duke of Burgundy, perceiving the pernicious conſequences of uniting France to England, was to throw off his unnatural connections with the latter, and to ſacrifice his animoſities to policy. In a word, the foreign dominions of the Engliſh were to be raviſhed from them. And Charles VII. inſtructed by the paſt, and apprehenſive of future invaſions and calamities, was to guard againſt them by the wiſdom and the ſtability of his precautions.

Thus, the decay of the feudal ſyſtem, the diſorders of the mercenaries, and the political condition of France with regard to England,

England, all conſpired to illuſtrate the neceſſity of a ſtanding force.

Having deliberated maturely on the ſtep he was to take, Charles VII. in the year 1445, ſelecting out of his forces a body of cavalry, to the number of nine thouſand, formed them into fifteen regular and ſtanding companies, under officers of experience. Three years after, encouraged by his ſucceſs, he eſtabliſhed a ſtanding infantry of Frank archers, to the number of ſixteen thouſand (6). The nobility, who had been long tired and diſguſted with the fatigues and the returns of military ſervice, to which their tenures ſubjected them, and the people, who hoped, under diſciplined troops, to be free from the inſults and oppreſſions which they had known under the mercenaries, oppoſed not theſe eſtabliſhments. They were ſtruck with the advantages to be derived from them, but diſcerned not their dangerous and fatal tendency. No conſtitutional limitations were made; no bulwarks were raiſed up for the ſecurity of the national independence and liberties. Succeeding princes were to add to, and improve on the regulations of Charles; and, from this period, the monarchs of France were to be in the full capacity of levying taxes at their pleaſure, and of ſurveying, in mockery, the rights and pretenſions of their ſubjects.

But, while France and other ſtates of Europe, in conſequence of theſe general reaſons, and from the idea of their own intereſt, and

and the upholding a balance of power, were to be induced to admit of ſtanding armies, and were thence to loſe their liberties, the ſame cauſes did not operate the ſame effects in England. The introduction of a ſtanding army was, indeed, to be made effectual there; but at a very diſtant period, and on principles the moſt conſiſtent with liberty. The advantages to accrue from it did not eſcape obſervation; but its dangers were ſtill ſeen in the ſtrongeſt light; and its eſtabliſhment was oppoſed, till the very moment when its neceſſity was abſolute and uncontrollable.

Till the reign of Charles II. the feudal militia, and the troops furniſhed by contract with nobles and captains, and by the enliſting of volunteers, continued to conſtitute the uſual military power of England. Till the ſame aera, alſo, commiſſions of array were iſſued by princes to procure forces on extraordinary occaſions. And, the termination of every war was regularly followed with the diſbandment of the army.

Of theſe inſtitutions, the inconveniencies, as I have ſaid, were infinite and enormous. They were preferable, however, to a ſtanding army, with deſpotiſm. For regulations and policy might, in ſome degree, ſupply and alleviate their defects and abuſes. The diſorders, indeed, of the feudal militia, had riſen to a height, which, conſidering the growing refinement of the nation, admitted not of any remedy. They were to endure, of conſequence,

conſequence, till the extinction of tenures. But wholeſome rules and enactments might depreſs or diminiſh the confuſions and the oppreſſions which were the natural reſults of the uſe and diſmiſſion of mercenaries; and theſe were not wanting (7). It was likewiſe poſſible to give a check to the violence of princes in the iſſuing of commiſſions of array; and the ſpirit of the conſtitution, and expreſs laws, made it fully underſtood, that they ought to be undertaken and executed with the greateſt reſpect for the freedom of the ſubject, and in caſes only of urgent danger and apparent neceſſity (8).

The reduction of the power of taxation aſſumed by princes, and the declaration of *magna charta*, that the people were to grant the ſupplies which they thought neceſſary to government, had foſtered the paſſion for independence. The conſtant appeals of the people to charters declaratory of their antient freedom and privileges, and correctory of abuſes, that time and the maxims of tyranny had produced, gave them an evident ſuperiority which they might exert in all political contentions. It was eaſy to diſcover when the ſovereign was diſpoſed to encroach; and the power the commons could oppoſe to him was deciſive. To refuſe him money, was to diſarm him. Of himſelf, he could maintain no formidable army; and the people were not to laviſh to him their wealth, that he might oppreſs them.

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The ſchools of law, which were opened by learned men immediately after the ſettlement of the charters of liberty, were to diffuſe widely the fundamental and free principles of the conſtitution (9). The diſcuſſion of political topics was to employ even the loweſt ranks of the citizens, and to engender a turbulence, which, with all its ills, muſt be allowed to be reſpectable.

The awe over parliamentary debate, which Richard II. effected by the body of four thouſand archers, which he attempted to keep up, and the inſolence and diſorders of this band, awakened, to an uncommon degree, the public jealouſy, and evinced, with deciſion, the dangers of a ſtanding force (10). The miſerable ſtate of France, under the military deſpotiſm which Charles VII. had begun, and which Louis XI. had accompliſhed, was to diſplay, in all its terrors, that mode of adminiſtration which allows to the prince the command of the taxes and the army (11).

The Engliſh, aſtoniſhed at the tyranny and pride of kings in other nations, were to repreſs them in their own. The ſpirit of oppoſition to the crown, natural to the government, and brought into exertion by the oppreſſive views, and the encroaching domination of princes, unfolded all their powers to the commons. During a long ſeries of years, no ſtanding army was permitted. It was held in the utmoſt deteſtation; and its exiſtence was even deemed incompatible with the liberty of the ſubject.

In

In the wars between the houſes of York and Lancaſter, armies were frequently raiſed; but no ſtanding eſtabliſhment was thought of. The meaſure was both impolitic and violent, while the leaders of different factions were courting popularity. In the moment of peace, the ſoldier was loſt in the citizen; and the army that conducted its commander to the throne, did not remain with him an inſtrument of his tyranny. It left him to the enjoyment of the legal rights of ſovereignty, and was not to ſubvert the government. The ſtruggle was not for a tyrant, but a king. The conſtitution was reſpected during ſcenes of violence and hoſtility, and the people felt a riſing importance amidſt ſlaughter and blood.

Henry VII. who united, in his perſon, the rights of the rival families, was permitted to conſtitute the yeomen of the guard. But theſe were only for the protection of the perſon of the ſovereign, and were not to increaſe to an army. They were to be a ſtate or ornament to the crown, not a terror to the ſubject. The obſtinacy of Charles I. and the civil wars to which it gave riſe, were to confirm the antient conſtitution, and to demonſtrate, that neither the military power, nor the power of taxation, were prerogatives of the prince. Years and diſorders were to render more ſolid the fabric of our government.

Yet, after the reſtoration of Charles II. had taken place, an event of great importance in our hiſtory, was to call, in a parti-

cular manner, for the ſtanding force, from which the nation was ſo averſe. The ſyſtem of tenures, ſo decayed and ſo unſuitable to refining times, haſtened to extinction. Early in this reign, a ſtatute of infinite utility, gave a mortal blow to military tenures (12). The ſyſtem of fiefs, ſo beneficial in one period, and ſo deſtructive in another, was overturned. The feudal ſtrength, or militia of England, after languiſhing for ages in diſeaſe and weakneſs, received the wound of which it periſhed. In its place a ſtanding army was expedient, and could alone correſpond with the majeſty of the people and the dignity of the crown.

The invention of cannon and fire-arms had changed the art of war. Movements, evolutions, and exerciſes, were not to be acquired to perfection by any militia, or even by mercenaries, who were hired for a ſeaſon, and diſmiſſed at the cloſe of a campaign. Other nations were poſſeſſed of ſtanding armies, and of theſe the force was not to be oppoſed by troops leſs regular and leſs diſciplined. Self-preſervation, and the neceſſity of attending to the balance of power in Europe, pointed irreſiſtibly to this eſtabliſhment. Its dangers, notwithſtanding, were great, and might be fatal to the prince who ſhould attempt it.

Invited, or rather compelled, by conſiderations the moſt powerful, Charles made the experiment. He ventured to maintain, by his private authority, a ſtanding force of five thouſand ſoldiery, for guards and garriſons. The jealous ſpirit of the people was

was alarmed. A meaſure ſo unconſtitutional, excited fears and apprehenſions, which behoved to be conſulted. Yet James II. did not ſcruple to augment the ſtanding force to thirty thouſand men, whom he ſupported from his own civil liſt. The nation was on the brink of a precipice. The revolution approached. The bill of rights declared, that the ſovereign was not to raiſe or uphold a ſtanding force in times of peace, without the conſent of the parliament. And the matured experience of ſucceeding times, employed itſelf to deviſe the policy which was to make our army regular and formidable, with the leaſt poſſible inconvenience to liberty.

A ſtanding body of troops, as abſolutely neceſſary, is kept up under the command of the crown, but by the authority of the legiſlature. The power of an act of parliament gives every year its continuance to our army; and any branch of the legiſlature may annually put a period to its exiſtence, by objecting to it. The dangers of a ſtanding force are thus prevented; its advantages are ſecured; and the ſoldiery, not living in camps, but intermingled with the people, are taught, while they reſpect the crown, to feel for the intereſts and proſperity of the nation. With theſe ſlow degrees, and with theſe ſymptoms of jealouſy, did a ſtanding army become a part of our conſtitution.

# CHAPTER VI.

*Of Manners and Refinement. The diſſolute Conduct of the Women amidſt the Decline and Oppreſſions of Fiefs. The general Corruption which invades Society.*

WHILE the varying ſituation of fiefs and chivalry was to produce the moſt important conſequences in polity and government, it was to be no leſs powerful in changing the general picture of ſociety; and the manners, which were to figure in their ſtate of confuſion and diſorder, are a contraſt to thoſe which attended their elevation and greatneſs. The romantic grandeur and virtue which grew out of the feudal aſſociation, in its age of cordiality and happineſs, could not exiſt when that cordiality and happineſs were decayed. The diſorders of fiefs had operated on chivalry; and the deviations of both from perfection, affecting ſtrongly the commerce of life and the condition of the female ſex, were to terminate in new modes of thinking, and new ſyſtems of action.

The diſaſtrous ſtate of fiefs, diſuniting the intereſts of the lord and the vaſſal, gave riſe to oppreſſions and grievances. Theſe

produced

produced a proneneſs to venality and corruption. All ranks of men, from the ſovereign to the ſlave, ſeemed at variance. Rapacity and inſolence were to characteriſe the ſuperior and the maſter; chicane and diſaffection, the vaſſal and the ſervant. A relaxation of morals, total and violent, was to prevail. Chivalry, loſing its renown, the purity of the knightly virtues was to be tarniſhed. When it fell as a military eſtabliſhment, its generous manners were not to remain in vigour. The women were to loſe their value and their pride. The propenſity to vice, foſtered by political diſorder, and the paſſion for gallantry, driven to extremity by the romantic admiration which had been paid to the ſex, were to engender a voluptuouſneſs, and a luxury which, in the circle of human affairs, are uſually to diſtinguiſh and to haſten the decline and the fall of nations.

Manners, too ſtately and pure for humanity, are not to flouriſh long. In the ruined ſtates of fiefs and chivalry, there prevailed not, in the one ſex, the ſcrupulous honour, the punctilious behaviour, and the diſtant adoration of beauty, which had illuſtrated the aera of their greatneſs; nor, in the other, were there to be remarked, the cold and unconquerable chaſtity, the majeſtic air, and the ceremonious dignity which had lifted them above nature. A gallantry, leſs magnificent, and more tender, took place. The faſtidiouſneſs and delicacies of former ages wore away. The women ceaſed to be idols of worſhip, and became objects of love. In an unreſerved intercourſe, their attractions were

were more alluring. The times, prone to corruption, were not to reſiſt their vivacity, their graces, their paſſion to pleaſe. Love ſeemed to become the ſole buſineſs of life. The ingenious and the ſentimental found a laſting intereſt and a bewitching occupation in the aſſiduities, the anxieties, and the tenderneſs of intrigue. The coarſe and intemperate, indulging their indolence and appetite, ſought the haunts, and threw themſelves into the arms of proſtituted beauty.

The talents which, of old, recorded the deeds of valour, and the atchievements of war, were now devoted to the fair (1). In every country of Europe, the poet, or the *Troubadour*, was to conſecrate to them his homage and his ſongs (2). And, to the faſhions of gallantry, the riſe of literature is to be aſcribed. Men of genius, and men who fancied they poſſeſſed it, reſorted to the courts of princes, and to the palaces of the noble; and the praiſe, which they knew how to laviſh, got them attention and patronage. To make verſes was the road to preferment. No lady was without her poet. Nor was poetry the exerciſe only of thoſe who wiſhed to better their fortunes. While it was to give riches and reſpect to the obſcure, by the connections it was to gain to them, it was to be an ornament and an honour to the great. Princes and barons, as well as knights and gentlemen, found it the ſureſt recommendation to their miſtreſſes (3). They ſung their charms, their diſdain, and their rigours. Even the artificial tenderneſs of the poet often grew into reality; and

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the fair one, who, at firſt, only liſtened to praiſe, was to yield to paſſion. The adulation paid to beauty, diſpoſed it to approve; complaints led to pity; pity to love. The enchantment of perpetual flatteries, of proſtrations reſpectful and paſſionate, of vows repeated with ardour, of ſighs ever meant to allure, corrupted a ſex, of which the ſenſibilities are ſo exquiſite. The rite of marriage, formerly ſo ſanctimonious, was only courted to be abuſed (4). The pride of condition, more powerful than modeſty, was, indeed, a check to the virgin; but ſhe was to wait reluctantly the moment, when her coyneſs and timidities, inſtead of rebuking the paſſions, were to be a zeſt to them. All the fopperies of fancy were exhibited, all the labyrinths of love were explored. A licentiouſneſs, which knew no reſtraint from principle, was rendered more ſeducing by the decorums and decorations of a fantaſtic gallantry (5).

Religion, which muſt ever mix in human affairs, is oftner to debaſe than to enlighten. It is, for the moſt part, a maſs of ſuperſtitions, which encourage the weakneſſes of mankind. This was the caſe with Chriſtianity in the darkneſs of the middle times. The votaries of beauty did not ſcruple to addreſs the Deity to ſoften its obſtinacy. In the heat of intrigue they invoked the Trinity and the ſaints for ſucceſs (6). Religion was employed to give a poignancy to the diſorders of proſtitution and luſt. The rich were to have houſes of debauch in the form of monaſteries, conſiſting of many cells or apartments, and under the government

ment of abbeſſes (7). The profaneneſs of gallantry diſturbed and deformed even the meditations of the moſt pious. The devotee was to ſeek a miſtreſs in heaven. He was to look up to the virgin with the eyes of a lover, and to contemplate the beauties of her perſon, and the graces of her carriage (8). What is more extravagant, the felicities of futurity ſeemed a trifle unworthy of acceptance, without the contacts and the vanities of an irreverent courteſy. 'I would, not,' ſaid a *Troubadour*, 'be in Para-'diſe, but on the condition of making love to her whom I a-'dore (9).'

The vices and example of the clergy added to the general contagion. They were to exceed not only in ſuperb living, and in the luxuries of the table, but in the paſtimes and the gratifications of illicit love (10). It was in vain that laws were made to prohibit them from entertaining, in their houſes, 'any 'virgins dedicated to God.' The arts of the Popes to tear them from their women, would fill volumes. No eccleſiaſtic was without his concubines (11). The ſins of the ſaint were groſs and comfortable. In contempt of all decency, they were even to educate publicly the fruits of their amours. Rampant and diſſolute, they preached religion, and were a diſgrace to it; virtue and they were in haſte to contemn it; another world and they were immerſed in the enjoyments of the preſent.

An univerſal corruption diffuſed itſelf. To be deep in debauch, and ſucceſsful with the ladies, were certain marks of worth. They were parts of the eminence to which the deſerving were to aſpire. To be amorous and deceitful, were not leſs meritorious than to be brave and witty. There was exhibited a ſtrange picture of fierceneſs and effeminacy, oppreſſion and politeneſs, impiety and devotion.

The age, in which ſo many armies, inflamed with zeal, were to fight for the recovery and poſſeſſion of the holy ſepulchre, was remarkable for the moſt criminal depravity. The pilgrims and cruſaders exported the vices of Europe, and imported thoſe of Aſia. Saint Louis, during his pious and memorable expedition, could not prevent the moſt open licentiouſneſs and diſorder. He found houſes of proſtitution at the doors of his tent (12). His character, his example, and his precautions, were reſtraints, ineffectual and fruitleſs.

While the ladies of rank were to be beſieged in form, to be purſued in all the windings of affectation and caprice, and to oppoſe to their impatient lovers all the obſtacles of a delicacy pretended or real, the women of inferior condition were to be approached with familiarity. It even appears to have been common for huſbands to make a traffic of the chaſtity of their wives, though ſevere regulations were enacted to repreſs this practice (13). The offices of the laundreſs and the milliner, being yet

yet no particular profeſſions, there were in the habitations and the palaces of the rich, apartments for women, who, while they performed the ſervices peculiar to theſe, were alſo debauched to impurity, and ſubſervient to luſt (14). Juriſdiction, being yet ambulatory, and kings, making frequent progreſſes through their dominions, it was uſual for proſtitutes to follow the court; and officers were appointed to keep them in ſubjection and order (15). To be *marſhal of the King's whores* in particular places and diſtricts, was an honour and a dignity (16).

To this degeneracy and profaneneſs, I am inclined to trace the law, which, in the declining condition of fiefs, made it a forfeiture of the eſtate, for the vaſſal to debauch the ſiſter, the daughter, or the wife of his ſuperior (17).

In the greater towns, there were women who lived openly by proſtitution, exerciſing it as a profeſſion. There were even whole ſtreets which were inhabited by them. In Paris and in London, the number of public brothels was incredible. In the latter, in the days of Richard II. a Lord Mayor imported ſtrumpets from Flanders, and kept ſtew-houſes, where the dainty and the ſqueamiſh were to trade in this foreign merchandize (18.) Bordelloes or ſtews were permitted and ſanctioned by the authority of government in every country of Europe (19). To twelve of theſe Henry VII. gave his licenſe; and ſigns painted on their walls diſtinguiſhed them, and invited the paſſenger (20).

So general was the licentiouſneſs which ſpread itſelf, that the proprietors of houſes found it neceſſary to let them out under the expreſs condition, that the leſſee ſhould keep and harbour no common women (21). Henry VIII. who approved not love in any form, but that of matrimony, ſuppreſſed many ſtew-houſes in Southwark, and ordained, that proſtitutes ſhould not receive the rites of the church while they lived, nor have a Chriſtian burial, when they were dead (22).

Such were the manners which were produced by the oppreſſions and diſorders of fiefs and chivalry. And thus, notwithſtanding what many writers have aſſerted, I am entitled to conclude, that the ſpirit of chivalry was not uniform any more than that of fiefs; and that, at different periods, its manners were oppoſite and contradictory.

AUTHO-

# AUTHORITIES,

# CONTROVERSY,

AND

# REMARKS.

# Authorities, Controverſy, and Remarks.

## B O O K I.

### C H A P T E R I.

#### S E C T I O N I.

(1) 'AGRI, pro numero cultorum, ab univerſis per vices 'occupantur, quos mox inter ſe ſecundum digna-'tionem partiuntur.' *Tacit. de Mor. Germ. c.* 26. 'Privati ac 'ſeparati agri apud eos nihil eſt.' *Caeſar de bell. Gall. lib.* 4. *c.* 1. The German tribes paſſed annually from the fields they had cultivated. 'Arva per annos mutant.' *Tacit. de Mor. Germ. c.* 26. 'Neque longius anno remanere uno in loco incolendi cauſa licet.'

'licet.' *Caeſar de bell. Gall. lib.* 4. *c.* 1. The condition of property among theſe nations I have treated in another work. *Hiſtorical Diſſert. concerning the Antiquity of the Engliſh Conſtitution, Part* 1.

Similar diſtinctions prevail in all barbarous nations, and give riſe to a ſimilar way of thinking. 'Formerly,' ſays Mr *Adair*, 'the Indian law obliged every town to work together in one 'body, in ſowing or planting their crops; though their fields 'are divided by proper marks, and their harveſt is gathered ſe-'parately. The Cheerake and Muſkohge ſtill obſerve that old 'cuſtom.' *Hiſtory of the American Indians.*

Among the Indians of Peru, it is ſaid, that the territory occupied was the property of the ſtate, and was regulated by the magiſtrate; and that, when individuals were permitted to poſſeſs particular ſpots, theſe, in default of male iſſue, returned to the community. *Royal commentaries of Peru, book* 5. *ch.* 1. *and* 3.

It ſeems to have ariſen out of the old cuſtom, which conſidered land as the property of nations, that in Europe, when all heirs failed, the property of the individual went to the *fiſc*, or to the ſovereign as repreſenting the ſtate.

'Quod ſi maritus et mulier ſine herede mortui fuerint, et 'nullus uſque ad ſeptimum gradum de propinquis et quibuſ-'cunque

'cunque parentibus invenitur, tunc res *fiſcus* adquirat.' *LL. Baivvar. tit.* 14. *l.* 9.

'*Fiſcus* tunc agat, quando nec parentum, nec filiorum, nec ne-'potum, nec agnatorum, nec cognatorum, nec uxoris et mariti, 'quae ſuccedat, extare comperitur perſona, *ſecundum veterum con-*'*ſtituta.*' *Edictum Theoderici Regis, c.* 24.

The fields in paſture belonged to the community or tribe, as well as the fields in tillage. The moment that the flocks or herds of one individual left them, they might be poſſeſſed or occupied by thoſe of another; and ſo on in ſucceſſion. It was under the influence of ſuch manners that Abraham ſaid to Lot, 'Is 'not the whole land before thee? ſeparate thyſelf, I pray thee, 'from me; if thou wilt take the left-hand, then I will go to the 'right; or, if thou depart to the right-hand, then I will go to the 'left.' *Geneſis, Ch.* xii. *v.* 9. And to this condition of ſociety the Roman poets make frequent alluſions, though they do not ſeem to have underſtood it with accuracy *.



* Ante Jovem nulli ſubigebant arva coloni,
Nec arare quidem, aut partiri limite campum
Fas erat; in medium quaerebant; ipſaque tellus
Omnia liberius nullo poſcente ferebat. VIRG.

Non domus ulla fores habuit, non ſixus in agris
Qui regeret certis finibus arva lapis. TIBUL.

When the territory of a tribe or nation ceaſed to be its property, and individuals acquired particular ſpots or eſtates, which they cultivated for their uſe, and tranſmitted to their poſterity, it was a conſequence of the old manners, that theſe improvements were regarded as the uſurpations of the powerful on the weak; and hiſtorians aſſure us, that it happened both in Greece and Italy, that the *land-marks* which had been fixed to diſtinguiſh the boundaries of property, were frequently removed or deſtroyed. It ſeemed an encroachment on the rights of the people, that lands, which, of old, paſtured indifferently the cattle of ſucceſſive occupiers, ſhould be allotted to the uſe and convenience only of private men. It was, accordingly, not merely neceſſary to make laws to prevent the violation of private rights; but, what is curious in an uncommon degree, even the *termini* or *land-marks*, that they might remain unremoved for the preſervation and the ſeparation of property, were exalted into *divinities*. Thus, religion, as well as policy, held out its terrors to force mankind to learn the art of appropriation, and to accept of power and riches.

Among the Celtic and German barbarians, the defacing and the removing of land-marks were alſo common delinquencies; and, in the puniſhment of them, much ſeverity was exerciſed.

'Si quis limites complantaverit, aut *terminos fixos* fuerit au-
'ſus evellere, ſi ingenuus eſt, per ſingula ſigna vel notas vicenos
'vi.

'vi. ſolid. componat; ſi ſervus eſt, per ſingula ſigna L. flagella 'ſuſcipiat.' *LL. Baivvar. tit.* xi. *l.* 1. *et* 2.

'Si quis liber homo *terminum antiquum* corruperit, aut exter-'minaverit, et probatum fuerit, ſit culpabilis lxxx. ſol. medium 'regi, et medium in cujus fine fuerit terminus. Si quis ſervus 'alienus *terminum antiquum* ruperit, aut exterminaverit, mortis in-'currat periculum, aut ſol. xl. redimatur.' *LL. Longobard, lib.* 1. *tit.* 26. *l.* 1. *et* 2. See farther *LL. Wiſigoth. lib.* 10. *tit.* 3. *De terminis et limitibus.*

*Boundaries* and *limits* are alſo an article in the code of Gentoo laws; and the regulations it holds out on this ſubject are, perhaps, a proof, that the maſs of the inhabitants of Hindoſtan, at the period of their enactment, had not loſt the idea of times which preceded the diſcovery of the advantages of a landed property. *Code of Gentoo laws, ch.* 12.

(2) 'Dominum ac ſervum nullis educationis deliciis dignoſ-'cas. Inter eadem pecora; in eadem humo degunt; donec aetas 'ſeparet ingenuos, virtus agnoſcat.' *Tacit. de Mor. Germ. c.* 20.

(3) 'Si civitas, in qua orti ſunt, longa pace et otio torpeat; 'plerique nobilium adoleſcentium petunt ultro eas nationes, quae 'tum bellum aliquod gerunt, quia et ingrata genti quies, et facilius 'inter ancipitia clareſcunt. . . . . Nec arare terram aut

'expectare annum, tam facile perſuaſeris quam vocare hoſtes et 'vulnera mereri: Pigrum quinimmo et iners videtur ſudore acqui- 'rere, quod poſſis ſanguine parare.' *Tacit. de Mor. Germ. c.* 14.

(4). Tacit. de Mor. Germ. c. 15. 21. 24. Struvius, Corpus hiſtoriae Germanicae, prolegom.

(5) 'Convictibus et hoſpitiis non alia gens effuſius indulget. 'Quemcumque mortalium arcere tecto, nefas habetur, pro for- 'tuna quiſque apparatis epulis excipit. Cum defecere, qui modo 'hoſpes fuerat, monſtrator hoſpitii et comes, proximam domum 'non invitati adeunt. Nec intereſt. Pari humanitate accipiun- 'tur. Notum ignotumque, quantum ad jus hoſpitii, nemo diſ- 'cernit. Abeunti, ſi quid popoſceris, concedere moris: Et poſ- 'cendi invicem eadem facilitas. Gaudent muneribus; ſed nec 'data imputant, nec acceptis obligantur.' *Tacit. de Mor. Germ. c.* 21.

The American tribes, who reſemble ſo completely the antient Germans, are thus characteriſed by *Lafitau*: 'Ils ont le coeur 'haut et fier, un courage a l'epreuve, un valeur intrepide, un 'conſtance dans les tourmens qui eſt heroique, une égalité que le 'contre-temps et les mauvais ſuccés n'alterent point: Entre eux 'ils ont un eſpece de civilité à leur mode, dont ils gardent toutes 'les bienſeances, un reſpect pour leur anciens, une deference pour 'leur égaux qui a quelque choſe de ſurprenant, et qu' on a peine

'a

'a concilier avec cette independance, et cette liberté dont ils pa-
'roiſſent extremement jaloux: Ils ſont peu careſſans, et font peu
'de demonſtrations; mais non obſtant cela, ils ſont bons, affables,
'et exercent envers les etrangers et les malheureux une chari-
'table hoſpitalité, qui a de quoi confondre toutes les nations de
'l'Europe.' *Moeurs des Sauvages Ameriquains, vol. 1. p. 106.* See alſo *Charlevoix, Journ. Hiſt. lettre 21.* Such, with a few exceptions, it is to be thought, is the character of all nations in an early age of ſociety.

(6) Tacit. de Mor. Germ. c. 15. Struvius, Corp. Hiſt. Ger. prolegom. Cluver. Germ. Antiq. lib. 1.

(7) 'Cibi ſimplices, agreſtia poma, recens fera, aut lac con-
'cretum. Sine apparatu, ſine blandimentis, expellunt famem.
'Adverſus ſitim non eadem temperantia. Si indulſeris ebrietati,
'ſuggerendo quantum concupiſcunt, haud minus facile vitiis,
'quam armis vincentur.' *Tacit. de Mor. Germ. c. 23.*

(8) 'Crebrae ut inter vinolentos rixae, raro conviciis, ſaepius
'caede et vulneribus, tranſiguntur. Sed et de reconciliandis in-
'vicem inimicis, et jungendis affinitatibus, et adſciſcendis princi-
'pibus, de pace denique ac bello, plerumque *in conviviis* conſul-
'tant: Tanquam nullo magis tempore aut ad ſimplices cogita-
'tiones pateat animus, aut ad magnas incaleſcat. Gens non aſtu-
'ta nec callida aperit adhuc ſecreta pectoris licentia loci. Ergo
'detecta

'detecta et nuda omnium mens poſtera die retractatur: Et ſalva 'utriuſque temporis ratio eſt. Deliberant dum fingere neſciunt; 'conſtituunt dum errare non poſſunt.' *Tacit. de Mor. Germ. c.* 22.

The deliberating on buſineſs, and the holding of councils of ſtate during entertainments, was the practice of the Celtic and Gothic nations. And, it is remarkable, that the word *mallum* or *mallus*, which, during the middle ages, denoted the national aſſembly, as well as the county-court, is a derivative of *mael*, which ſignifies *convivium*.

From this union of feſtivity and buſineſs, there reſulted evils which gave occaſion to regulations which cannot be read without wonder. It was a law of the Longobards, 'Ut nullus e-'brius ſuam cauſam in mallum poſſit conquirere, nec teſtimoni-'um dicere; nec comes placitum habeat niſi jejunus.' *LL. Longobard. lib.* 2. *tit.* 52. *l.* xi. We read in *Capit. Kar. et Lud.* 'Rectum et honeſtum videtur ut judices jejuni cauſas audiant 'et diſcernant.' *Lib.* 1. *l.* 62. *ap. Lindenbrog.* And the following law was made in a ſynod held at Wincheſter ann. 1308. 'Item, quia in perſonis ebriis legitimus dici non debet conſen-'ſus, inhibemus, ne in tabernis per quaecunque verba, aut niſi 'jejuna ſaliva, vir aut mulier de contrahendo matrimonio ſibi in-'vicem fidem dare praeſumant.' *Wilkins, Concil. tom.* 2. *p.* 295.

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This rudeneſs, of which we ſee the ſource in Tacitus, ſeems to have continued very long in England. 'Non exolevit hactenus mos 'antiquus,' ſays *Sir Henry Spelman*, 'nam in mallis ſeu placitis, 'quae aſſiſſae jam vocantur, vicecomites provinciarum bis quotan- 'nis magnam exhauriunt vim pecuniae, in judicibus nobilibuſque 'patriae convivandis.' *Gloſſ. p.* 385. In Scotland, in the memory of perſons yet alive, the lawyers and retainers of the courts of juſtice did buſineſs conſtantly and openly in the tavern. It is likewiſe obſervable, that ſome particulars which regard the inſtitution of the jury, are to be explained and illuſtrated from theſe facts, and this way of thinking. *Hiſtorical Diſſertation concerning the antiquity of the Engliſh conſtit. Part* 4. *Sect.* 2.

(9) 'Nullas Germanorum populis urbes habitari, ſatis notum 'eſt, ne pati quidem inter ſe junctas ſedes. Colunt diſcreti ac diver- 'ſi, ut fons, ut campus, ut nemus placuit. . . . Nec enim cum 'ubertate et amplitudine ſoli labore contendunt, ut pomaria con- 'ſerant, et prata ſeparent, et hortos rigent. Sola terrae ſeges im- 'peratur. Unde annum quoque ipſum non in totidem dige- 'runt ſpecies: Hiems, et ver, et aeſtas, intellectum ac vocabula ha- 'bent: Autumni perinde nomen ac bona ignorantur.' *Tacit. de Mor. Germ. c.* 16. 26.

(10) 'Ceterum nec cohibere parietibus deos, neque in ullam 'humani oris ſpeciem aſſimilare, ex magnitudine caeleſtium ar- 'bitrantur.

'bitrantur. Lucos ac nemora conſecrant, deorumque nominibus 'appellant ſecretum illud, quod ſola reverentia vident. Auſpicia 'forteſque ut qui maxime obſervant.' *Tacit. de Mor. Germ. c. 9. Struvius, Corp. Hiſt. Germ. prolegom.*

(11) Tacit. de Mor. Germ. c. 12. Cluver, Germ. Antiq. lib. 1.

(12) 'Duces exemplo potius quam imperio, ſi prompti, ſi 'conſpicui, ſi ante aciem agant, admiratione praeſunt.' *Tacit. de Mor. Germ. c. 7.*

(13) 'Nigra ſcuta, tincta corpora, atras ad proelia noctes le-'gunt. . . . Cedere loco, dummodo rurſus inſtes, conſilii quam 'formidinis arbitrantur.' *Tacit. de Mor. Germ. c. 6. 43.*

A writer of reputation has, of late, advanced an opinion, that our European anceſtors were averſe from deceit and ſtratagem. Yet a propenſity to theſe is perhaps a characteriſtic of all barbarous nations; and, that it applied to our forefathers, the teſtimony before us is a ſufficient proof. In oppoſition to the barbarians of Europe, he holds out the American Indians, and contends that they are defective in active courage. Open violence he accounts as deſcriptive of the former; a reliance on ſtratagem and ſurpriſe, he remarks as peculiar to the latter. And, as the cauſe of this

this diverſity, he aſſigns different original diſpoſitions. *Sketches of the Hiſtory of Man, vol.* 1. *p.* 23. 24.

The truth is, that a proneneſs to open violence, is to be applied to the American as well as to the European ſavage; and that the love of ſtratagem and ſurpriſe was not leſs peculiar to the European than to the American. Stratagem and ſurpriſe, in America and in Germany, and indeed in all tribes and nations whatever, are parts of the art of war, or of military prudence, and refer not to courage. When the military art is neareſt to perfection, and when cultivation is higheſt, there will be leſs of ſtratagem in war; for cunning, if I may be allowed the expreſſion, is the wiſdom of weakneſs. The ingenious author hazards a conjecture for a diſcovery, and miſtakes for philoſophy a ſally of vivacity.

(14) 'Latrocinia nullam habent infamiam, quae extra fines 'cujuſque civitatis fiunt; atque ea juventutis exercendae ac deſi-'diae minuendae cauſa fieri praedicant.' *Caeſar de Bell. Gall. lib.* 6. *c.* 22. 'Materia munificentiae per bella, et raptus.' *Tacit. de Mor. Germ. c.* 14.

Among the Greeks the ſame manners were known. It was common among them, in early times, for the more eminent and powerful to exerciſe, with reputation and honour, the crimes of robbery and piracy. *Thucydides, lib.* 1. *Homer, Odyſſ.* 3.

Such is the caſe in all rude communities. In the wilds of America this way of thinking is prevalent at this hour. Warriors, reſtleſs and impatient, aſſociate together, and ſeek for renown and plunder beyond the boundaries of their tribe. It is of bodies of this kind that *Laſitau* ſpeaks in the following paſſage; which is not to be read, without recalling to one's mind what Caeſar and Tacitus have ſaid of the Gauls and Germans.

'Le partis detachés, qui ſe forment en pleine paix, pour ne 'pas intereſſer la nation par des hoſtilités, leſqu'elles pourroi-'ent avoir des ſuites facheuſes, vont porter la guerre chez les 'peuples les plus reculés. . . . . Cette petite guerre eſt un ve-'ritable aſſaſſinat, et un brigandage, qui n'a nulle apparence *de* '*juſtice*, ni dans le motif qui l'a fait entreprendre, ni par rap-'port aux peuples, à qui elle eſt faite; ils ne ſont ſeulement pas 'connus de ces nations eloigneés, ou ne le ſont que par les dom-'mages qu'ils leur cauſent, lorſqu'ils vont les aſſommer ou de 'faire eſclaves preſque juſques aux portes de leur paliſades. Les 'ſauvages regardent cela neanmoins *comme un belle action.*' *Tom.* 2. *p.* 169.

It was under the influence of ſuch manners that the northern nations carried on thoſe piratical incurſions, which, from the time of Charlemagne, filled Europe with terror. They were planned and conducted by men of rank, and conferred honour on them, and on the inferior adventurers. Yet modern hiſtori-

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ans, who are perpetually applying modern notions to antient times, attend not to this circumſtance, and treat theſe maritime expeditions with a ſeverity that may be moral enough, but which is hiſtorically injudicious and abſurd.

In the age of Tacitus, the only German community who appear to have conceived the blame of this conduct, was the Chauci. For the great ſuperiority and refinement of this people, I pretend not to account. But though, in general, it conſiſted with honour and merit, among the German ſtates, to commit ſpoil and plunder among neighbouring nations; yet, it is not to be forgot, that the theft or violence of an individual within the territories of his own tribe, was atrocious, and a ſubject of puniſhment. This circumſtance, which is curious in the hiſtory of morality, is to be explained from the condition of an infant ſociety. Their riches, conſiſting chiefly of herds and flocks, which wander over vaſt tracts of country, are only to be protected by the terrors of juſtice. Hence the laws of the barbarians affixed *death* to the crime of ſtealing a horſe, while the aſſaſſination, or the murder of a man, was expiated by a piece of money or a fine. 'Qui caballum ſuraverit, *capite* puniatur.' *LL. Saxon tit.* 4. *l.* 1. The extent of their foreſts, while it contributed to render more eaſy the abſtraction of cattle, made it the more neceſſary to puniſh the offence. It alſo was a reſult of their unappropriated ſolitudes, that the proprietors of cattle found a difficulty in tracing them. Hence the cuſtom of fixing bells to them.

'Mos quippe *antiquus* inoleverat Francis, et maxime Auſtraſiis, 'ut paſcentibus equis *tintinnabula* imponerent, quo ſi forte lon- 'gius in paſcendo aberraſſent, eorum ſonitu dignoſci poſſent.' *Lindenbrog. Gloſſ. voc. Tintinnabulum.* And what is worthy of notice, the taking away of theſe bells was a heinous delinquence, and puniſhed ſeverely. 'Si quis tintinnabulum involaverit de 'jumento vel bove, ſolidum reddat. De vacca tremiſſes duos; 'De berbicibus vel quibuſcunque pecoribus, tremiſſes ſingulos co- 'gatur exſolvere.' *LL. Wiſigoth. lib. 7. tit. 2. l. 11.* See alſo *LL. Salic. tit. 29. et LL. Burgund. tit. 4. § 5.* In general, the atrocity of theft among the Gothic nations, may be gathered from the following Swediſh law, which is of high antiquity. 'In furti reum ſecuri, furca, defoſſione, vivicomburio animad- 'verti poſſe, nec eo nomine vel haeredibus, vel eccleſiae, vel regi, 'ullam ſatisfactionem deberi.' *Stiernhook de jur. Sueon. et Goth. vet. p.* 366.

Theſe important circumſtances in the hiſtory of manners, the legality of a diſtant robbery, and the criminality of a domeſtic one, which are ſo pointedly illuſtrated by the early ſtate of the Greeks, by that of the German and Celtic barbarians, and by the condition of the American tribes at this hour, receive a confirmation, of the greateſt weight, from the conſideration of the Gentoo juriſprudence. In the code of Gentoo laws, there is this remarkable ordinance.

'The

'The mode of *ſhares among robbers* is this: If any *thieves*, 'by the *command* of the *magiſtrate*, and with his *aſſiſtance*, have 'committed depredations upon, and brought any booty from *an-* 'other province, the magiſtrate ſhall receive a ſhare of one ſixth 'of the whole; if they receive no command or aſſiſtance from the 'magiſtrate, they ſhall give the magiſtrate, in that caſe, one tenth 'for his ſhare; and, of the remainder, their chief ſhall receive four 'ſhares; and whoſoever among them is perfect maſter of his oc- 'cupation, ſhall receive three ſhares; alſo, whichever of them is 'remarkably ſtrong and ſtout, ſhall receive two ſhares, and the 'reſt ſhall receive one ſhare; if any one of the community of the 'thieves happens to be taken, and ſhould be releaſed from the '*cutcherry* *, upon payment of a ſum of money, all the thieves 'ſhall make good that ſum by equal ſhares.' *Code of Gentoo laws*, *p.* 146.

A perſon who has not conſidered ſavage and barbarous manners, will think, with the utmoſt ſurpriſe, that a magiſtrate ſhould not only command a robbery, and give his countenance and protection to thieves, but even participate in their plunder. Such, notwithſtanding, is the ſyſtem of equity among all rude nations. While diſtant expeditions, however, and robberies, were thus conſidered as legal and honourable, the diſturbers of domeſtic quiet and happineſs were puniſhed among the Hindoos with the greateſt rigour.

'If

* A court of juſtice.

'If a man,' ſay their laws, 'ſteals an elephant, or a horſe, ex-
'cellent in all reſpects, the magiſtrate ſhall cut off his hand, and
'foot, and buttock, and deprive him of life.

'If a man ſteals an elephant, or a horſe, of ſmall account, the
'magiſtrate ſhall cut off from him one hand and one foot.

'If a man ſteals a camel or a cow, the magiſtrate ſhall cut off
'from him one hand and one foot.' *Gentoo laws, p.* 249.

There are, in this code, a great variety of laws againſt domeſtic thefts and robberies. The ſtate of ſociety of the Hindoos, to which it has a reference, reſembles very much that of the German barbarians, when they had overturned the empire of the Romans; and a compariſon of it with the laws of the Ripuarians, Burgundians, Longobards, and Franks, would lead to many curious diſcoveries in the progreſs of legiſlation and government.

(15) 'Nec regibus infinita aut libera poteſtas. . . . De
'minoribus rebus principes conſultant, de majoribus omnes.
'Ita tamen, ut ea quoque, quorum penes plebem arbitrium eſt,
'apud principes pertractentur. Coeunt, niſi quid fortuitum et
'ſubitum inciderit, certis diebus, cum aut inchoatur Luna aut
'impletur; nam agendis rebus hoc auſpicatiſſimum initium cre-
'dunt. . . . . Rex vel princeps, prout aetas cuique, pro-

'ut

'ut nobilitas, prout decus bellorum, prout facundia eſt, audi-
'untur, auctoritate ſuadendi, magis quam jubendi poteſtate. Si
'diſplicuit ſententia, fremitu aſpernantur: Sin placuit, frameas
'concutiunt.' *Tacit. de Mor. Germ. c.* 7. xi.

This limitation of government is a conſequence of manners in early times; and, notwithſtanding what is obſerved by many writers of antiquity, it ſeems very clear, that the popular or republican mode of adminiſtration is prior to monarchy.

In every rude community we know, the government has a ſurpriſing affinity to that of the Germans, as deſcribed by Tacitus. And this is peculiarly obſervable of the American nations. 'Tout,' ſays *Charlevoix* of the Americans, 'doit être examiné et
'arreté dans les conſeils des anciens, qui juge en derniere in-
'ſtance.' *Journ. Hiſtoriq. lettre* 18. 'The higheſt title among
'the Americans,' ſays *Mr Adair*, either in military or civil
'life, ſignifies only a chieftain: They have no words to ex-
'preſs deſpotic power or arbitrary kings. . . . The power
'of their chiefs is an empty ſound. They can only perſuade
'or diſſuade the people, either by the force of good nature and
'clear reaſoning, or colouring things ſo as to ſuit their prevail-
'ing paſſions. It is reputed merit alone that gives them any
'titles of diſtinction among the meaneſt of the people. . . .
'When any national affair is in debate, you may hear every
'father of a family ſpeaking in his houſe, on the ſubject, with
'rapid

'rapid and bold language, and the utmoſt freedom that a peo-
'ple can uſe. Their voices, to a man, have due weight in eve-
'ry public affair, as it concerns their welfare alike.' *Hiſt. of the American Indians, p.* 428. See alſo *Laſitau, tom.* 2. *p.* 475.

(16) 'Ac primo ſtatim Chaucorum gens, quamquam incipiat
'a Friſiis, ac partem litoris occupet, omnium quas expoſui gen-
'tium lateribus obtenditur, donec in Cattos uſque ſinuetur.
'Tam immenſum terrarum ſpatium non tenent tantum Chauci,
'ſed et implent: Populus inter Germanos nobiliſſimus, quique
'magnitudinem ſuam malit juſticia tueri. Sine cupiditate, ſine
'impotentia, quieti ſecretique, nulla provocant bella, nullis rap-
'tibus aut latrociniis poſtulabantur. Idque praecipuum virtu-
'tis ac virium argumentum eſt, quod, ut ſuperiores agant, non
'per injurias aſſequuntur. Prompta tamen omnibus arma, ac ſi
'res poſcat exercitus: Plurimum virorum equorumque: Et
'quieſcentibus eadem fama.' *Tacit. de Mor. Germ. c.* 35.

'Fennis mira feritas, foeda paupertas, non arma, non equi,
'non penates: Victui herba, veſtitui pelles, cubile humus. Sola
'in ſagittis ſpes, quas inopia ferri oſſibus aſperant. Idemque
'venatus viros pariter ac feminas alit. Paſſim enim comitan-
'tur, partemque praedae petunt. Nec aliud infantibus ferarum
'imbriumque ſuffugium, quam ut in aliquo ramorum nexu
'contegantur.

'contegantur. Huc redeunt juvenes, hoc ſenum receptaculum. 'Id beatius arbitrantur, quam ingemere agris, illaborare domi- 'bus ſuas alienaſque fortunas ſpe metuque verſare. Securi ad- 'verſus homines, ſecuri adverſus deos, rem difficillimam aſſecuti 'ſunt, ut illis ne voto quidem opus ſit.' *Tacit. de Mor. Germ.* c. 46.

## SECTION II.

(1) MR MILLAR on the Diſtinction of Ranks, ch. 1. Sketches of the Hiſtory of Man, vol. 1. Dr Robertſon, Hiſtory of America, vol. 1. p. 318.

(2) 'Verberare ſervum, ac vinculis et opere coercere, rarum.' *Tacit. de Mor. Germ. c.* 25.

(3) 'Domus officia uxor et liberi exequuntur.' *Tacit. de Mor. Germ. c.* 25. 'Liberos ſuos,' ſays *Caeſar* of the Gauls, 'niſi 'quum adoleverint, ut munus militiae ſuſtinere poſſint, palam ad 'ſe adire non patiuntur; filiumque in puerili aetate in publico 'in conſpectu patris aſſiſtere turpe ducunt.' *De Bell. Gall. lib.* 6. *c.* 18.

(4) 'Quum ex captivis quaereret Caeſar, quamobrem Ario- 'viſtus proelio non decertaret? hanc reperiebat cauſam, quod 'apud Germanos ea conſuetudo eſſet, ut matres familias earum 'ſortibus et vaticinationibus declararent, utrum proelium committi 'ex uſu eſſet necne, eas ita dicere, *non eſſe fas Germanos ſuperare*, 'ſi

'*ſi ante novam lunam proelio contendiſſent.*' *Caeſar de Bell. Gall. lib.* 1. *c.* 50.

(5) Strabo lib. 7. Struvius, Corpus Hiſtor. German. prolegom. Cluver. German. Antiq. lib. 1.

(6) 'Ineſſe quinetiam ſanctum aliquid, et providum putant. '. . . Vidimus ſub Divo Veſpaſiano Velledam diu apud ple-'roſque numinis loco habitam. Sed et olim Auriniam, et com-'plures alias venerati ſunt, non adulatione, nec tamquam face-'rent deas.' *Tacit. de Mor. Germ. c.* 8.

The honours of divinity came to be proſtituted to theſe women with a wonderful profuſion. Among the monuments of antiquity in Germany, many altars, with inſcriptions to them, have been diſcovered; and, both in England and Scotland, there are remains of the ſame kind. *Keyſler, Antiq. Select. Septentr. et Celt. p.* 379—448. *Camden, Britannia, paſſim.* The appellation given them, in Caeſar, is *matres familias*; and theſe inſcriptions bear *matribus* or *matronis Suevis, Treveris, Auſanis*, &c.

Under Paganiſm and Chriſtianity, the fatidical arts they practiſed drew upon them a very different fate. The credulity of the Pagan advanced them into goddeſſes. The more criminal ignorance of the Chriſtian conſidered them as witches, and conſigned them to the fire. Their mutterings were conceived to be

magical. It was thought they could faſcinate children with a look, were in covenant with demons, to whoſe embraces they ſubmitted, could blaſt the fruits of autumn, raiſe commotions in the air, and interprete dreams. What is remarkable, the laws againſt ſuch women, and againſt witchcraft, were not abrogated in England till the year 1736: And, in other countries of Europe, there are ſtill regulations in force againſt theſe miſerable objects, and this imaginary crime.

(7) 'Ad matres ad conjuges vulnera ferunt: Nec illae nume-'rare, aut exſugere plagas pavent.' *Tacit. de Mor. Germ. c.* 7. *Cluver. Germ. Antiq. lib.* 1.

(8) 'Feminae lineis amictibus velantur, eoſque purpura vari-'ant.' *Tacit. de Mor. Germ. c.* 17. 'Cadurci, Caleti, Ruteni, 'Bituriges, ultimique hominum exiſtimati Morini, imo vero Gal-'liae univerſae vela texunt. Jam quidem et Tranſrhenani hoſtes: 'Nec pulchriorem aliam veſtem eorum feminae noverunt.' *Plin. Hiſt. Nat. lib.* 19. *c.* 1. Concerning the Longobards, there is the following paſſage in *Paulus Diaconus*: 'Veſtimenta eis 'erant laxa, et maxime linea, qualia Anglo-Saxones habere ſo-'lent, ornata inſtitis latioribus, vario colore contextis.' *Hiſt. Longobard. lib.* 4. *c.* 7. And of the daughters of Charlemagne, there is this notice in *Eginhard*. 'Filias lanificio aſſueſcere, co-'loque ac fuſo, ne per otium torperent, operam impendere, at-'que ad omnem honeſtatem erudiri juſſit.' *Vit. Car. Mag.* In America,

America, according to *Mr Adair*, the women are the chief, if not the only manufacturers. The men judge, that if they ſhould perform offices of this kind, it would exceedingly diſgrace them. *Hiſt. of the Amer. Indians, p.* 423. Theſe offices, however, being characteriſtic of the women, are honourable in them. In Rome, during the virtuous times of the republic, the employments of the women were the diſtaff and the ſpindle; and *Plutarch* has ſaid, in reproach of Fulvia the widow of Clodius, that ſhe could neither ſpin nor ſtay at home. *Vit. Anton.*

(9) 'Statim e ſomno, quem plerumque in diem extrahunt, 'lavantur, ſaepius calida, ut apud quos plurimum hiems occu-'pat.' *Tacit. de Mor. Germ. c.* 22.

——————'Molleſque flagellant
'Colla comae.'

MART. EPIG. lib. 1.

'Partemque veſtitus ſuperioris in manicas non extendunt, 'nuda brachia ac lacertos: Sed et proxima pars pectoris patet.' *Tacit. de Mor. Germ. c.* 17. 'Cet uſage,' ſays *Pelloutier*, 's'eſt conſervé en Saxe, en Pruſſe, et en Livonie. Les femmes 'y portent des chemiſes ſans manche, et laiſſent leur gorge à 'decouvert.' *Hiſt. des Celtes, lib.* 4. *ch.* 4.

*Diodorus Siculus, lib.* 5. records the comelineſs both of the Gaulic and German women; and *Biſſula*, a German beauty, is celebrated by *Auſonius.*

(10)

(10.) 'Matrem ſuam,' ſays *Tacitus* of Civilis, 'ſororeſque, 'ſimul omnium conjuges, parvoſque liberos, conſiſtere a tergo 'jubet, hortamenta victoriae.' *Hiſt. lib.* 4. 'In proximo pig-'nora; unde feminarum ululatus audiri, unde vagitus infantium. '. . . . Memoriae proditur quaſdam acies, inclinatas jam 'et labantes, a feminis reſtitutas, conſtantia precum, et objectu 'pectorum, et monſtrata cominus captivitate, quam longe impa-'tientius feminarum ſuarum nomine timent.' *Tacit. de Mor. Germ. c.* 7. 8. 'Ut virorum cantu, feminarum ululatu, ſonuit 'acies.' *Tacit. Hiſt. lib.* 4. See alſo *Caeſar de Bell. Gall. lib.* 1. *c.* 51.

'Adeo ut efficacius obligentur animi civitatum, quibus inter 'obſides *puellae* quoque nobiles imperantur.' *De Mor. Germ. c.* 8. *Suetonius*, ſpeaking of the tranſactions of Auguſtus againſt the barbarians, has theſe words: 'A quibuſdam novum genus 'obſidum *feminas* exigere tentaverit; quod negligere *marium* '*pignora* ſentiebat.' *Vit. Aug. c.* 21.

(11) '*Sororum filiis* idem apud avunculum qui apud patrem 'honor.' *Tacit. de Mor. Germ. c.* 20. Hence it is, ſays Monteſquieu, that our earlieſt hiſtorians ſpeak in ſuch ſtrong terms of the love of the kings of the Franks for the children of their *ſiſters*. *L'eſprit des Loix, lib.* 18. *ch.* 22. John de Laet remarks of the Braſilians, that they call their uncles and aunts *fathers* and *mothers*; and the ſame cuſtom prevails among the north.

north American Indians. *Adair hiſt. of the Amer. Indians, p.* 213. Among the Hurons, ſays *Charlevoix*, with whom the dignity of the chief is hereditary, the ſucceſſion is continued through the *women;* ſo that, at the death of a prince, it is not his own, but his *ſiſter's ſon* who ſucceeds; and, in default of him, the neareſt relation in the female line. It is added, 'Si toute un branche 'vient à s'eteindre, la plus noble *matrone* de la tribu, ou de la 'nation, choiſit le ſujet, qui lui plait davantage, et le declare 'chef.' *Journ. Hiſt. Lett.* 18. 'Æthiopes,' ſays *Damaſcenus*, '*ſororibus* potiſſimum honorem exhibent, et ſucceſſionem tradunt 'reges, non ſuis, ſed *ſororum filiis.*' *De mor. Gent.* Theſe facts, which coincide ſo curiouſly, expreſs, in a forcible manner, the early importance of the ſex.

(12) 'Nec aut conſilia earum aſpernantur, aut reſponſa ne-'gligunt.' *Tacit. de Mor. Germ. c.* 8. To deliberate, in public, on national concerns, was a privilege common to the women in all the Gothic and Celtic tribes. *Plutarch, de virtut. mulier. Polyaenus in Stratag. lib.* 7. This advantage they enjoyed alſo in old times in Greece. *Goguet, part.* 2. *book* 1. *ch.* 4. And, at this hour, in America, they are called to the national meetings, to give their advice and counſel. *Charlevoix, Journ. Hiſt. let.* 13. 18. 'Les femmes,' ſays *Laſitau*,' ſont toujours les premieres qui de-'liberent, ou qui doivent deliberer, ſelon leur principes, ſur les 'affaires particulieres ou communes. Elles tiennent leur conſeil 'à part, et en conſequence de leur determination, elles donnent 'avis

'avis aux chefs des matieres qui ſont ſur le tapis, afin qu'ils en 'deliberent à leur tour. Les chefs, ſur ces avis, font aſſembler 'les anciens de leur tribu; et ſi la choſe dont on doit traiter 'intereſſe le bien commun, tous ſe reuniſſent dans le conſeil ge-'nerale de la nation.' *Tome* 1. *p.* 477.

The German women, after their nations had made conqueſts, ſtill attended to affairs. As they debated, in the days of Tacitus, in the aſſemblies of their tribes, ſo they appeared afterwards in the Gothic parliaments. Among the Franks, as well as the Anglo-Saxons, the Queens had an active ſhare in the government; and, among the former, there is the example of a Queen who received a national homage. *Greg. of Tours, lib.* 4. Werburgh, Queen to King Wightred, aſſiſted at the wittenagemot, or national council, held at Berghamſted. *Chron. Sax. p.* 48. *Malmsbury, lib.* 2. mentions a parliament held by King Edgar, in which he was aſſiſted by his mother Alfgina. And Canute is ſaid, in a national aſſembly, to have acted by the advice of Queen Emma, and the biſhops and nobility of England. *Mat. Weſt. p.* 423.

When the crown fell to a prince in his minority, the queen-mother had the guardianſhip. Thus Fredegund had the guardianſhip of her ſon Clotarius IV. Brunehild of her grandſons Theodebert and Theoderic, and Balthildis of her ſon Clotarius III.

(13)

(13) The following particulars, as well as thoſe already mentioned, favour the notion of the importance of women in early times. 'Apud Saunitas vel Samnites, de adoleſcentibus et virginibus quotannis publicum habetur judicium. Quem igitur eorum optimum eſſe ſententia judicum pronunciarit, is ſibi ex virginibus eligit uxorem quem vult, deinde ſecundus ab eo alteram, et ſic de caeteris deinceps.' *Damaſc. de Mor. Gent.* 'Sauromatae uxoribus in omnibus obtemperant, tanquam dominabus.' *Ibid.* 'Lycii vitam ſuſtinuerunt ex latrociniis. Legibus autem non utuntur, ſed conſuetudinibus, dominanturque ipſis feminae inde uſque ab initio.' *Heraclides de Politiis Graecorum.* 'In ea regione quam Athamanes habitant, mulieres terram colunt, viri greges paſcunt.' *Ibid.* *Tacitus*, diſcourſing of the antient Britains, has theſe words. 'His atque talibus invicem inſtructi, Boudicea generis regii femina, duce (neque enim *ſexum* in imperiis diſcernunt) ſumpſere univerſi bellum.' *Vit. Agric. c.* 16. In Homer, who paints rude manners, the women make a figure. In Virgil, who deſcribes refined manners, they are inſipid. Helen, Hecuba, Andromache, Penelope, Nauſicaa, and Calypſo, have marked and diſtinct characters. But Lavinia ſeems to be without paſſions of any kind, and to have that nothingneſs of character which, in the ages of civility, is too frequently connected with the moſt enchanting forms. The women of Egypt were highly prized, and had a kind of authority over the men. The toilets of the goddeſſes in Homer, and the gay dreſſes of the Greek ladies, ſeem to mark the conſidera-

tion of the ſex. At Sparta, the women interfered in the affairs of ſtate, and aſſumed a ſuperiority over the men. 'Les femmes,' ſays *Charlevoix* of the Americans, 'ont la principale 'autorité chez tous les peuples de la langue Huronne, ſi on en 'excepte le canton Iroquois d'Onneyouth, ou elle eſt alternative 'entre les deux ſexes.' *Journ. Hiſt. lett.* 18.

The importance of women among the Hindoos, is illuſtrated in a ſtriking manner by the following laws.

'If a perſon has called a modeſt woman unchaſte, and the 'woman, or her huſband, ſhould make complaint to a magiſtrate, 'whenever the perſon accuſed appears before the magiſtrate, or 'arbitrator, he ſhall, upon the ſpot, anſwer to the complaint, 'and make no delay.

'If a woman, impelled by any calamity, ſhould come to any 'perſon, and remain with him, if he commits fornication with 'that woman, the magiſtrate ſhall fine him two hundred and 'fifty *puns* of *cowries*.

'If a man ſpeaks reproachfully of his wife's father or mother, 'the magiſtrate ſhall fine him fifty *puns* of *cowries*.

'If a man is prepared to caſt upon a woman's body tears, or 'phlegm, or the paring of his nails, or the gum of his eyes, or

'the

'the wax of his ears, or the refuſe of victuals, or ſpittle, the ma-
'giſtrate ſhall fine him forty *puns* of *cowries*.

'If a man throws upon a woman, from the neck upwards, a-
'ny ſpue, or urine, or ordure, or ſemen, the magiſtrate ſhall
'fine him one hundred and ſixty *puns* of *cowries*.

'So long as a woman remains unmarried, her father ſhall
'take care of her; and, ſo long as a wife remains young, her
'huſband ſhall take care of her; and, in her old age, her ſon
'ſhall take care of her; and if, before a woman's marriage, her
'father ſhould die, the brother, or brother's ſon, or ſuch other
'near relations of the father, ſhall take care of her; if, after mar-
'riage, her huſband ſhould die, and the wife has not brought
'forth a ſon, the brothers, and brothers ſons, and ſuch other
'near relations of her huſband, ſhall take care of her: If there
'are no brothers, brothers ſons, or ſuch other near relations of
'her huſband, the brothers, or ſons of the brothers of her father
'ſhall take care of her; and, in every ſtage of life, if the perſons
'who have been allotted to take care of a woman, do not take
'care of her, each, in his reſpective ſtage accordingly, the ma-
'giſtrate ſhall fine them.' *Code of Gentoo laws, p.* 111. 163. 214. 220. 224. 282.

## SECTION III.

(1) 'ET Venus in Sylvis jungebat corpora amantum;
'Conciliabat enim vel mutua quamque cupido,
'Vel violenta viri vis, atque impensa libido,
'Vel pretium, glandes, atque arbuta, vel pira lecta.'
*Lucret. lib. 5.*

(2) 'Interfunt parentes et propinqui ac *munera* probant: Mu-
'nera non ad delicias muliebres quaesita, nec quibus nova nupta
'comatur; sed boves et frenatum equum, et scutum cum framea
'gladioque. In haec munera *uxor* accipitur, atque invicem ip-
'sa armorum aliquid viro offert. Hoc maximum vinculum,
'haec arcana sacra, hos conjugales deos arbitrantur.' *Tacit. de Mor. Germ. c.* 18.

Remains of these usages are to be found during every period of the middle ages. About the year 500, on the marriage of Alamaberga, the niece of Theoderic King of the Ostrogoths, that prince wrote a letter to her husband, Hermanfrid, King of the Thuringians; from which it appears, that dressed or accoutred horses

horſes were preſented; and, in *Loccenius*, there are other examples to the ſame purpoſe. *Antiq. Sueogoth. lib.* 2. Among the Iriſh, a war horſe and a ſpear were conjugal preſents, till a late aera. 'Ejuſmodi quidpiam,' ſays *Sir Henry Spelman*, in alluſion to the paſſage quoted from Tacitus, 'apud Germano-'rum nepotes Hibernicos ipſimet aliquando deprehendimus. 'Equum ſcilicet *militarem* cum *framea* inter *jugalia munera* ſo-'lennius fuiſſe, ſed a patre ſponſae donatum. Addebant autem 'Hiberni cytharam, ut blandioris fortunae ſolatium.' *Gloſſ. p.* 174.

In the American marriages, an interchange of preſents was alſo an eſſential circumſtance, and gave them a ſanction and validity. 'Le mariage n'eſt pas plutot reſolu que le parentes de 'l'epoux envoyent un preſent dans le cabane de l'epouſe. Ce 'preſent conſiſte en des colliers de porcelaine, des pelleteries, 'quelques couvertures des fourrure, et d'autres meubles d'uſage, 'qui vont aux parens de la fille, à laquelle on ne demande point 'de dot; mais ſeulement qu'elle veuille accepter l'epoux qu'on 'lui offre. Ces ſortes des preſens ne ſe font pas ſeulement une 'fois, il s'en fait un eſpece d'alternative entre les deux cabanes 'des futurs epoux, laquelle a ſes loix preſcrites par la coutume; 'mais, des que les preſens ſont acceptés, le mariage eſt cenſé, 'conclu, et le contrat paſſé.' *Laſitau, tom.* 1. *p.* 565.

From the words of Tacitus, it appears, that among the Germans the conſent of the parents or relations was particularly neceſſary

neceſſary in the contracting of marriages; and this is ſtill more obvious from the laws of the barbarians, after they had made conqueſts. *LL. Wiſigoth, lib.* 3. *tit.* 2. 4. 8. *LL. Saxon. tit.* 6. *LL. Friſionum, tit.* 9. The reaſon was, that the young men and the young women might not, through paſſion, marry into families hoſtile to their own. In a ſtate of ſociety which is confined, and where government is imperfect, diviſions and animoſities among chiefs are frequent, and carried to extremity. It is uſeful to remark, that the neceſſity of this conſent, and the ſimilar diſorder of the feudal manners, aſcertained *the incident of marriage*; in conſequence of which, the *wards* of a *ſuperior* could not marry without his approbation. This *incident*, which was to grow ſo important, is to be traced back to the woods of Germany. *Hiſt. Diſſert. concerning the antiq. of the Engliſh conſtitution, part* 2.

(3) 'Nec ſe mulier extra virtutum cogitationes, extraque 'bellorum caſus putet, ipſis incipientis matrimonii auſpiciis ad-'monetur, venire ſe laborum periculorumque *ſociam*, idem in 'pace idem in bello paſſuram auſuramque; hoc juncti boves, 'hoc paratus equus, hoc data arma denuntiant. Sic vivendum, 'ſic pereundum.' *Tacit. de Mor. Germ. c.* 18.

The matrimonial gifts among the ſavages of America, expreſſed, in like manner, the labour to which the women were to ſubmit, and were doubtleſs to be underſtood in the ſame light, as indications

indications of equality, and expreſſions of reſpect. Yet *Charlevoix* affects to conſider them rather as marks of ſlavery, than as teſtimonies of friendſhip. *Journal. Hiſt. let.* 19. Of this author, it is to be wiſhed, that he had given his facts without reaſoning upon them; or, that he had endeavoured to be conſiſtent with himſelf; for, in other parts of his writings, we are led to conceive a high opinion of the ſtate of the American women. My Lord Kaims and Mr Millar ſeem, in the preſent caſe, to have eſtimated too highly his opinion. And I am ſenſible that Dr Robertſon has ſubſcribed to their ſentiments. They join, in conſidering the preſents to the women as characteriſtic of the meanneſs of their condition, and of their being the ſlaves of the men. They connect ſlavery with labour and buſineſs, without reflecting, that eaſe and luxury cannot poſſibly belong to women in barbarous times, and that, in all times, the men and women are to be judged of by different ſtandards. The warriour does not apply the ſame rules to his ſon and his daughter, and does not fancy that they are to ſhine alike in feats of arms. Valour he accounts the chief quality of the former: In the latter, he requires ſomething more of gentleneſs, and a ſkill in domeſtic affairs. Of this there is a very ſtrong and apt illuſtration in Mr *Adair*, with which I will conclude this note.

'The American Indians lay their *male* children on the ſkins 'of panthers, on account of the communicative principle, which 'they reckon all nature is poſſeſſed of, in conveying qualities ac-

'cording

'cording to the regimen followed; and, as the panther is en-
'dowed with many qualities beyond any of his fellow animals
'in the American woods, as ſmelling, ſtrength, cunning, and a
'prodigious ſpring, they reckon ſuch a bed is the firſt rudiments of
'*war*. But, it is worthy of notice, that they change the regimen
'of nurturing their young *females*: Theſe they lay on the ſkins
'of fawns, or buffalo-calves, becauſe they are *ſhy* and *timorous*;
'and, if the mother be indiſpoſed by ſickneſs, her neareſt female
'relation ſuckles the child, but only till ſhe recovers.' *Hiſt. of the American Indians, p.* 421.

I enter not into the diſpute, whether there be panthers in America, or whether this name is only given to diſtinguiſh animals which reſemble them. In either caſe, my argument is ſafe, and to the point.

(4) 'Pugnatum in obſidentis; et ereptus Segeſtes, magna
'cum propinquorum et clientum manu. Inerant *feminae* nobi-
'les; inter quas uxor Arminii eademque filia Segeſtis, mariti
'magis quam parentis animo, neque victa in lacrymas, neque
'voce ſupplex, compreſſis intra ſinum manibus, gravidum ute-
'rum intuens. . . . . Arminium ſuper inſitam violentiam
'rupta uxor, ſubjectus ſervitio uxoris uterus, vecordem agebant;
'volitabatque per Cheruſcos arma in Segeſtem, arma in Caeſarem
'poſcens.' *Tacit. Annal. lib.* 1. *c.* 57. 59.

(5)

(5) 'Severa illic matrimonia. . . . . Pauciſſima in tam 'numeroſa gente *adulteria*, quorum poena praeſens et maritis 'permiſſa. Acciſis crinibus, nudatam coram propinquis expel- 'lit domo maritus, ac per omnem vicum verbere agit.' *Tacit. de Mor. Germ. c.* 18. 19.

The power of the huſband to puniſh the adultery of the wife continued long during the middle ages. *LL. Viſigoth. lib.* 3. *tit.* 4. *l.* 3. 4. *LL. Burgund. tit.* 68. *l.* 1. It ſeems natural in a ſtate of ſociety, before the juriſdiction of the magiſtrate is fully acknowledged; and it is to be found accordingly among the Americans and other nations. *Laſitau tom.* 1. *p.* 588. *Europ. Settlem. vol.* 1. *p.* 180.

It is likewiſe to be obſerved, that the ſame mode of puniſhment prevailed long. 'Adulterii poena,' ſays *Lindenbrogius*, 'decalvari et fuſtari per vicos vicinantes.' *Gloſſ. p.* 1349. See farther *LL. Longobard. lib.* 1. *tit.* 17. *l.* 5. When the magiſtrate came to puniſh this delinquence, and, when the women, growing more detached from buſineſs, conſidered themſelves as objects of luxury and pleaſure, the crime of adultery appeared leſs heinous and offenſive; and a ſeparation or divorce, with the infamy of incontinence, became the puniſhment of an adultereſs.

From the aſſembled relations of the culprit, of whom *Tacitus* ſpeaks, it is to be imagined, that, in conjunction with the huſband, they conſtituted a court, and ſat upon her in judgment. *Coram propinquis expellit domo maritus.* Before the juriſdiction of the magiſtrate is fully underſtood and unfolded, it appears, that a kind of domeſtic tribunal exerciſes authority, and forms a ſtep in the progreſs of civil and criminal juriſdiction. This, in fact, we know to have been the caſe among the Romans. *Dion. Halicarn. Antiq. Rom. lib.* 2.

(6) 'Publicatae pudicitiae nulla venia: Non forma, non aetate, non opibus maritum invenerit. Nemo enim illic vitia ridet: Nec corrumpere et corrumpi ſeculum vocatur.' *Tacit. de Mor. Germ. c.* 19.

*Tacitus*, in this paſſage, as well as in many other places of his ſentimental and incomparable treatiſe, glances at the depraved manners of the Romans. The expreſſion *non opibus*, of which I have made no uſe in the text, applies not to the German tribes who inhabited the inland country, but to thoſe who bordered on the territories of the Romans.

The ſame attentions to chaſtity, ſo beautifully deſcribed by the Roman hiſtorian, prevailed among the Americans. 'Ils attribuent à la virginité et a la chaſtité certaines qualités et vertus particulieres.' *Laſitau, tom.* 1. *p.* 339. Thus it is in all rude nations;

nations; and, I believe, it will be found, on examination, that thoſe circumſtances of immodeſty among them, which oppoſe this way of thinking, have their riſe in the weakneſſes of ſuperſtition, and in the abuſes of the prieſthood.

Nature adorns and protects the female ſex with modeſty. And, it is a moſt deciſive proof of the reſpect paid to women, that, in almoſt all nations, the inſtitution of marriage is connected with uſages, which are contrived to favour and encourage their reſerve and chaſtity. It is the male always who ſolicits; and, in ſome ſtates, a kind of violence was employed to ſupport and ſuccour the modeſty of the bride. It ſeems to have been thus in early times among the Romans, and it was obviouſly ſo among the Spartans. In the former caſe, the bride appears to have been carried forcibly from the lap of her mother; in the latter, the affair aſſumed the ſemblance of a rape. *Feſtus, Catullus, Plutarch in Vit. Lycurg. et Quaeſt. Rom.* The virgin and her relations, no doubt, underſtood previouſly the tranſaction, and expected this violence. But it was a compliment to her thus to give an air of conſtraint to her conſent, to relieve her embarraſſment and diſtreſs, her emotion of fear and hope, anxiety and tenderneſs.

It was with a ſimilar view that the Romans conducted a bride to the houſe of her huſband, with her head covered. And the Germanic nations paid alſo this mark of reſpect to the modeſty

of their women, after they had made conqueſts. Compare *Apul. Metam. lib.* 4. *Tacit. Annal. lib.* 15. *c.* 37. And the *laws* of the barbarians *de conjugali velatione.*

Theſe circumſtances, and thoſe which I formerly remarked, with others not leſs expreſſive of the early importance of women, that I am preſently to mention, ſeem to have eſcaped my Lord Kaims and Mr Millar; and I beg it to be underſtood, that I oppoſe thus frequently their opinions from no captiouſneſs of temper, but becauſe, if they are juſt, mine muſt be ill founded and improper.

(7) 'Sera juvenum venus; eoque inexhauſta pubertas; nec virgines feſtinantur; eadem juventa, ſimilis proceritas: Pares validique miſcentur; ac robora parentum liberi referunt. . . . 'Quanto plus propinquorum, quo major adſinium numerus, tanto gratioſior ſenectus: Nec ulla orbitatis pretia. . . . . 'Numerum liberorum finire, aut quemquam ex agnatis necare, 'flagitium habetur.' *Tacit. de Mor. Germ. c.* 19. 20.

(8) 'Sua quemque mater uberibus alit, nec ancillis, ac nutricibus delegantur.' *Tacit. de Mor. Germ. c.* 20. This alſo is the practice in America and in all rude communities. 'Les 'ſauvageſſes n'ont garde de donner leur enfans á d'autres pour 'les nourrir. Elles croiroient ſe dépouiller de l'affection de 'mere, et elles ſont dans une ſurpriſe extrême de voir qu'il y ait

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'des nations au monde, ou cette uſage ſoit recû et etabli.' *Laſitau, tom.* 1. *p.* 593. The Roman virtue was at an end, ſays the author of the dialogue concerning orators, when the women gave their children to be ſuckled and educated by Greek nurſes and ſlaves. *Cap.* 29. In France, till the age of Charles V. princeſſes, and ladies of high rank, continued to ſuckle and educate their children. *Mezeray in Bultcel's tranſlation, p.* 388.

(9) A very ingenious writer has obſerved, that, before marriage is known as a regular inſtitution, the intereſt of the mother muſt be great; children being then, in a particular manner, under her juriſdiction, and having no connection, or a diſtant one, with the father. His obſervation is not to be controverted; and, accordingly, he mentions the circumſtance, as an exception to his theory. *Prof. Millar concerning the Diſtinction of Ranks, ch.* 1. *ſect.* 2.

It is obvious, that the reſpect which the children pay to the mother in this ſituation, raiſes the importance of the ſex; and it is worthy of notice, that, after marriage is known as an inſtitution, and the huſband and wife live together in the ſame cabin, the influence of the mother is by no means diminiſhed. For, though the father then acquires authority, the more amiable and winning attentions of the mother preſerve and continue her conſideration; and the military purſuits of the former calling him abroad, and employing his thoughts, leave to her the

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taſk of educating their offspring. Thus, among the Gauls and Germans, it was not till children attained a certain age, that they dared publicly to approach their fathers. *Sect.* 2. *note* 3. 'Les en-'fans,' ſays *Charlevoix* of the Americans, 'n'appartiennent qu' 'á la mere, et ne reconnoiſſent qu' elles. Le pere eſt toujours 'comme etranger par rapport à eux.' *Journ. Hiſt. let.* 19. It is our nature to be more attached to what is lovely and gentle, than to what is ſtern and venerable. It is 'the ſoft green of the 'ſoul,' as an elegant writer * expreſſes it, 'on which the eye de-'lights to reſt.'

(10) 'Septa pudicitia agunt, nullis ſpectaculorum illecebris, 'nullis conviviorum irritationibus corruptae. *Litterarum* ſecreta 'viri pariter ac feminae ignorant.' *Tacit. de Mor. Germ. c.* 19.

That knowledge and letters were incentives to corruption, we have alſo the opinion of *Salluſt*, who, notwithſtanding the freedom of his life, is a beautiful declaimer on the ſide of morality. It is of Sempronia that he thus ſpeaks: 'Literis Graecis docta: 'Pſallere et ſaltare elegantius, quam neceſſe eſt probae: Multa 'alia norat, quae inſtrumenta luxuriae ſunt, ſed ei cariora ſemper 'omnia quam decus et pudicitia fuit.' *De Bel. Catilin.*

(11) Theſe things, which are curious, are illuſtrated by the following paſſage of *Tacitus*. 'Melius quidem adhuc eae civitates, 'in

* Mr Burke.

'in quibus tantum virgines nubunt, et cum ſpe votoque uxoris 'ſemel tranſigitur. Sic unum accipiunt maritum, quomodo unum 'corpus, unamque vitam, ne ulla cogitatio ultra, ne lorgior cu- 'piditas, ne tamquam maritum, ſed tamquam matrimonium 'ament.' *De mor. Germ. c.* 19.

The matrimonial ſymbols, as was formerly obſerved, Note 2. conſiſted chiefly of an interchange of arms; but, among thoſe nations of the barbarians who, after their conqueſts, became accuſtomed to the manners of the Romans, this uſage ſuffered an early innovation. The ſymbols of arms were often neglected for thoſe of money. And the betrothing *per ſolidum et denarium* grew to be a faſhion.

Thus, according to the Salic law, a *virgin* was married *per ſolidum et denarium*. 'Convenit ut ego te ſolido et denario ſe- 'cundum legem Salicam ſponſare deberem; quod ita et feci.' *Form. Solen.* 75. *ap. Lindenbrog.* But it was not ſo with the *widow*. The ſymbols were augmented; and it is to be conceived, that their augmentation expreſſed that of the dower. 'Si 'quis homo moriens viduam dimiſerit, et eam quis in conjugium 'voluerit accipere, antequam eam accipiat Tunginus aut Centenari- 'us mallum indicent, et in ipſo mallo ſcutum habere debent, et 'tres homines cauſas tres demandare; et tunc ille qui viduam 'accipere vult, cum tribus teſtibus qui adprobare debent, *tres ſo- 'lidos aeque penſantes et denarium habere debet.*' *Lex. Sal. tit.* 46.

46. *c.* 1. The ſpirit of the German manners oppoſing ſecond marriages, made it neceſſary to bribe, as it were, the modeſty of the widow.

It deſerves remark, that traces of the connection of diſgrace with ſecond marriages, as to the women, are to be found in almoſt all nations; and this circumſtance, ſo favourable to the modeſty of the ſex, is a ſtriking proof of their early importance. There were ages of the Grecian and Roman manners when this diſgrace prevailed in all its force; and even among races of men the moſt ſavage, the immodeſty of ſecond marriages is repreſſed by particular uſages.

'Chez les habitans des côtes de Cumana,' ſays an ingenious writer, 'avant que de brûler le corps du mari, on en ſèpare la 'tête; on la porte á ſa veuve pour que la main poſée deſſus, 'elle jure de la conſerver precieuſement, et *de ne jamais ſe remarier.* Une veuve, chez les Caffres et les Hotentots, chaque 'fois qu'elle ſe *remarie*, eſt obligée de ſe couper un doigt.' *St. Foix, Eſſais Hiſtoriques ſur Paris, tom. 5. p.* 177.

(12) The King, according to Domeſday-book, demanded 20 ſhillings for the marriage of a *widow*, and 10 ſhillings for that of a *virgin*. 'Mulier accipiens quocunque modo maritum, 'ſi vidua dabat Regi 20 s. ſi puella 10 s. quolibet modo accipe-'ret virum.' *Domeſd. tit. Scropesberie, ap. Spelman, voc. Maritagium.* There is good evidence, that, in ſeveral cities of Germany,

many in the middle times, fines were paid to the magiſtrate on the marriage of a widow. *Heinnec. Elem. Jur. Germ. lib.* 1. *tit.* 10. § 222.

(13) Thus, the raviſhing of a widow was puniſhed more ſeverely than that of a virgin. 'Si quis *virginem* rapuerit contra 'ipſius voluntatem et parentum ejus, cum. xl. ſol. componat, et 'alios xl. cogatur in fiſco. Si autem *viduam* rapuerit quae coacta 'ex tecto egreditur orphanorum, et pro penuriae rebus, cum lxxx. 'ſol. componat, et lx. cogatur in fiſco.' *LL. Baivvar. tit.* 7. *l.* 6. 7.

By the way, this early ſeverity againſt rapes, is a ſtrong confirmation of my general argument, and is direct againſt the opinions of my Lord Kaims and Mr Millar. The reputation of females ſuffering, in this way, was forever marked with diſgrace. No ſuitors were now to court their alliance. Yet their minds had received no pollution, and their innocence could not be impeached. Their bodies, however, had been abuſed; and the loſs of value attending this abuſe, with the ſevere puniſhment of their violators, expreſs clearly the high and natural importance of the ſex.

In the Gentoo code, the conſideration of the ſex is alſo illuſtrated by laws too explicit to admit of doubt or cavil, and ſtill more ſevere.

'If a man by force commits adultery with a woman of an 'equal or inferior caſt, againſt her conſent, the magiſtrate ſhall 'confiſcate all his poſſeſſions, cut off his *penis*, and caſtrate him, 'and cauſe him to be led round the city, mounted upon an aſs.

'If a man, by cunning and deceit, commits adultery with a 'woman of an equal or inferior caſt, againſt her conſent, the 'magiſtrate ſhall take all his poſſeſſions, brand him in the fore-'head with the mark of the *pudendum muliebre*, and baniſh him 'the kingdom.

'If a man, by violence, or by cunning, or deceit, or againſt 'the woman's conſent, commits adultery with a woman of a 'ſuperior caſt, the magiſtrate ſhall deprive him of life.

'If a man, either by violence or with her conſent, commits 'adultery with an unmarried girl of a ſuperior caſt, the magi-'ſtrate ſhall put him to death.' *Code of Gentoo Laws, ch.* 19.

(14) '*Singulis uxoribus* contenti ſunt, exceptis admodum pau-'cis, qui non libidine, ſed ob nobilitatem, plurimis nuptiis ambi-'untur.' *Tacit. de Mor. Germ. c.* 18.

This, ſays *Monteſquieu*, explains the reaſon why the kings of the firſt race had ſo great a number of wives. Theſe marriages were leſs a proof of incontinence, than a conſequence of digni-

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ty; and it would have wounded them, in a tender point, to have deprived them of ſuch a prerogative. This, continues he, explains, likewiſe, the reaſon why the example of our kings was not followed by their ſubjects. *L'eſprit des Loix, liv.* 18. *c.* 25.

I know that my Lord Kaims has ſpoken of the polygamy of the Germanic nations; but the authority to which he appeals in proof of his notion, is the paſſage now cited from Tacitus, which is moſt directly againſt him. *Sketches, vol.* 1. *p.* 192. And indeed he has remarked, in another portion of his work, 'That polygamy was never known among the northern 'nations of Europe.' *Vol.* 1. *p.* 316. I am at a loſs to reconcile theſe opinions; and this ingenious author appears to have forgotten, that, in the ſtates of Germanic and Gothic origin, there were even ſevere laws againſt polygamy. *LL. Longob. lib.* 2. *tit.* 13. *l.* 1. 3. 5. *LL. Wiſigoth. lib.* 3.

The plurality of wives is a conſequence of luxury and pride, and does not uniformly diſtinguiſh rude times, even in climates which encourage and inſpirit the paſſions. In general, one man is then connected with one woman, and ſatisfied with her; and it is a proof of the antiquity of monogamy, that, when a plurality of wives is uniformly indulged, which happens not till the ages of property, there is always one of theſe who ſeems

more peculiarly the wife; the reſt appearing only as ſo many concubines.

The appetite for the ſex, it is to be obſerved, is not nearly ſo ſtrong in rude, as in cultivated times. Hardſhip and fatigue, the great enemies of inordinate love, waſte the barbarian. 'Il eſt 'de l'ancien uſage,' ſays *Laſitau*, 'parmi la plûpart des nations 'ſauvages, de paſſer la premiere annèe, apres le mariage contracté, 'ſans le conſommer; . . . . Et quoique les epoux paſ- 'ſent la nuit enſemble, c'eſt ſans prejudice de cet ancien uſage.' *Tome* 1. *p.* 575. Eaſe and good living, on the contrary, flatter the ſenſes in the ages of property. And, an abſtinence of this ſort would, doubtleſs, ſurpriſe very much the moſt timid and the moſt delicate of our virgins.

(15) The fortunate marriages of the relations of Dumnorix, are ſaid, by *Caeſar*, to have conſtituted a great proportion of his power. *De Bel. Gall. lib.* 1. *c.* 18. In the ſame author, there is the following notice concerning the wives of Arioviſtus. 'Duae fuerunt Arioviſti uxores, una Sueca natione, quam do- 'mum ſecum adduxerat; altera Norica, regis Vocionis ſoror, 'quam in Gallia duxerat, a fratre miſſam.' *De Bel. Gall. lib.* 1. *c.* 53.

*Tacitus* ſays expreſsly, that deliberations on the ſubject of marriage were frequent in the councils of a German ſtate. *De Mor.*

*Mor. Germ. c.* 22. And, in that ſingular work, the *Atlantica* of *Rudbeck*, there is this paſſage. 'In conciliis Upſalenſibus decre-'tum fuit, ut Olaus Rex Sueoniae filiam ſuam in matrimonio 'daret Olao Regi Norvagiae.' *P.* 214.

(16) After the introduction of Chriſtianity, a multitude of laws were enacted againſt inceſtuous marriages; and theſe prove, that little delicacy was previouſly paid to relation or deſcent. 'Uxorem habere non liceat ſocrum, nurum, privignam, nover-'cam, filiam fratris, filiam ſororis, fratris uxorem, uxoris ſoro-'rem: Filii fratrum, filii ſororum, inter ſe nulla praeſumptione 'jungantur.' *LL. Baivvar. tit.* 6. *l.* 1. See alſo *LL. Longob. lib.* 2. *tit.* 8. *LL. Alaman. tit.* 39. *LL. Sal. tit.* 14. *l.* 16.

In Scotland, about the year 1093, 'it was not uncommon,' ſays my *Lord Hailes*, 'for a man to marry his ſtep-mother, 'or the widow of his brother.' The learned and ingenious au-thor adds, 'I preſume that this was not owing to vague luſt, 'but to avarice; for it relieved the heir of a jointure.' *Annals of Scotland, p.* 39. The obſervation is acute; but I am afraid that, though in ſome inſtances it might be juſt, it will not vin-dicate the Scots from the groſſneſs and indecency which the prevalence of the cuſtom fixes upon them. Even in France, at a later period, an. 1454, the Count D'Armagnac married pu-blicly his own ſiſter. *St Foix, Eſſ. Hiſt. vol.* 5. *p.* 130. The ſtrange liberties taken by antient nations are ſufficiently known.

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A Perſian acted in conformity to the laws, and to juſtice, when he married his mother; and an Egyptian when he married his ſiſter.

In times of refinement and delicacy, virtue takes the alarm, even at the recital of ſuch facts; but the philoſopher, ſtruck with their univerſality over all ſocieties, however diſtant and diſtinct, is diſpoſed to inquire, Where it is that nature has placed her barriers; and what, on this head, in the codes of nations, is to be explained by natural law, and what by a policy civil and religious? The topic is full of curioſity, but not for the preſent purpoſe.

CHAP-

# CHAPTER II.

## SECTION I.

(1) THE total change produced in the condition of Europe by the ſettlements of the barbarous nations, is aſcribed by many writers, and by Dr Robertſon in particular, to the deſtructive violence with which they carried on their conqueſts, and to the havock which they made from one extremity of this quarter of the globe to the other. *Hiſtory of Charles* V. *vol.* I. *p.* 11. 197. 198.

It is to be remembered, notwithſtanding, that the conquerors incorporated themſelves, in ſome provinces, with the vanquiſhed; that much of the havock and violence ſo pompouſly deſcribed by antient hiſtorians, is to be referred to the wars they carried on among themſelves; and that, where havock and violence were leaſt known, the change produced was, with the exception of a few circumſtances, as general and complete as where they were experienced

experienced in the greateſt degree. Thus, chivalry and the feudal inſtitutions prevailed, in every ſtep of their progreſs, in every country of Europe.

In illuſtration, indeed, of his opinion, Dr Robertſon has ſaid, that where havock prevailed in no great degree, as in England, on the Norman invaſion, the antient inhabitants retained their own manners. It is certainly very true that the Anglo-Saxons retained their own manners. This, however, was no effect of the cauſe he has mentioned. The Norman revolution was not a conqueſt *. A victory was obtained by Duke William over Harold and his followers; but no victory was obtained over the people of England. And, even on the hypotheſis that the Duke of Normandy had *conquered* England, his illuſtration is without force. For the manners and policy of the Normans were the ſame with thoſe of the Anglo-Saxons; with this difference, that the former were, in ſome meaſure, a more improved people.

The completeneſs of the revolution conſequent on the ſettlements of the barbarians, is chiefly to be aſcribed, as I obſerve in the text, to the immenſe difference of manners in the conquerors and the conquered. The former were in a condition of growing civility; the latter in a ſtate of hopeleſs corruption. The German was approaching to perfection: The Roman had been

* See a Diſcourſe prefixed to Dr Sullivan's Lectures.

been declining from it. They mutually deſpiſed one another, and were urged on in different directions. The former, therefore, yielding to, and governed by the manners to which he had been accuſtomed, became neceſſarily the founder of new and peculiar eſtabliſhments.

(2) 'Agri pro numero cultorum ab *univerſis* per *vices* occu-'pantur, quos mox inter ſe ſecundum dignationem partiuntur. 'Facilitatem partiendi camporum ſpatia praeſtant. Arva per an-'nos mutant, et ſupereſt ager.' *Tacit. de Mor. Germ. c.* 26.

This intereſting information is well illuſtrated in the following relation from *Caeſar*. 'Suevorum gens eſt longe maxima et 'bellicoſiſſima Germanorum omnium. Ii centum pagos habere 'dicuntur; ex quibus quotannis ſingula millia armatorum, bel-'landi cauſa, ſuis ex finibus educunt. Reliqui domi manent: 'Pro ſe atque illis colunt. Hi rurſus invicem anno poſt in armis 'ſunt: Illi domi remanent. Sic neque agricultura, neque ratio, 'neque uſus belli intermittitur: Sed privati ac ſeparati agri a-'pud eos nihil eſt: Neque longius anno remanere uno in loco 'incolendi cauſa licet; neque multum frumento, ſed maximam 'partem lacte atque pecore vivunt, multumque ſunt in venationi-'bus.' *De Bell. Gall. lib.* 4. *c.* 1.

(3) From ſome remarkable paſſages in *Tacitus*, it is to be gathered, that, even in his age, the Germans were beginning to

 have

have an idea of a *private* property in land. This improvement would probably take place among the princes or chiefs, and in thoſe diſtricts which joined to the Roman frontiers ; and it is to be conceived, that the portions of ground firſt appropriated, would be thoſe around the cabins or huts of individuals. For each hut was ſurrounded with an *encloſure*. And it was doubtleſs out of this encloſure that the German ſlave, being aſſigned land by his maſter, paid, in return, like a tenant, a proportion of corn, cattle, or cloth. 'Ceteris ſervis, non in noſtrum morem 'deſcriptis per familiam miniſteriis utuntur. Suam quiſque ſe-'dem, ſuos penates regit. *Frumenti modum dominus, aut peco-'ris, aut veſtis, ut colono injungit : Et ſervus hactenus paret.*' *Tacit. de Mor. Germ. c.* 25. This appropriation of land, and exertion over it, would ſpread by degrees, and enlarge the notions of property.

In fact, it would ſeem, that this conduct was obſerved after the German conqueſts; and that the German *encloſure*, or the *lands of the houſe*, and the aſſignment of them to ſlaves or ſervants, were uſual. A proprietor or noble retained, to be cultivated by his ſervants, for domeſtic uſe and hoſpitality, the land which was *inter curtem*, or within view of the houſe or hall. What was out of the view of the houſe or hall, was given out in tenancy. Hence, among the Anglo-Saxons, the diſtinction of *inland* and *outland*. The inland, was the land *inter curtem*, or the *land of the houſe :* The outland was the land out of the view of

of the houſe *. Brithic, the rich Anglo-Saxon, had inland and outland, and diſpoſed of them, in his will, to different perſons †.

What is worthy of obſervation, the method of paying *in kind*, practiſed in Germany, and mentioned by Tacitus, continued alſo in the ſettlements of the barbarians, and even after they had become acquainted with coinage. Thus, in eſtates which had been long in any family, there were payments in poultry, and in neceſſaries for the houſe. *Du Cange Gloſſ. voc. Gallinagium et Henedpeny.* At this hour, both in England and Scotland, there are relics of this uſage.

In England, it was not till the age of Henry I. that the rents due to the crown were paid in money. 'In the early 'days,' ſays *Madox*, 'next after the Norman conqueſt, (if we 'are rightly informed), there was very little money, *in ſpecie*, 'in the realm. Then the tenants of knights fees anſwered



* '*Inland, et Inlandum.* Terra dominicalis, pars manerii dominica. Vox 'Saxonum, *terram interiorem* ſignificans, nam quae colonis et tenentibus 'concedatur, *utland* dicta fuit, hoc eſt *terra exterior*, hodie tenementalis.' *Spelman, Gloſſ. p.* 316.

† Lambard, Perambulation of Kent. 'Lego,' ſays Brithic, 'terras domi-'nicales Wulfego, tenementales Ælfego.'

'to their Lords by military ſervices; and the tenants in ſocage 'lands and demeanes (in great meaſure) by work and proviſions. 'The ingenious authour of the Dialogue concerning the Exche-'quer tells us, that, from the time of the Norman conqueſt, till 'the reign of King Henry I. the rents or ferms due to the king 'were wont to be rendered *in proviſions and neceſſaries for his 'houſehold**: And that, in King Henry the Firſt's time, the 'ſame were changed into *money*. Afterwards, in the ſucceeding 'times, the revenue of the crown was anſwered or paid, *chiefly 'in gold and ſilver;* ſometimes in palfreys, deſtriers, chaſcurs, le-'veriers, hawks, and falcons, (to wit, in horſes, dogs, and birds 'of game of divers ſorts), and in things of other kinds.' *Hiſt. of the Exchequer, vol.* 1. *p.* 272.

(4) *Allodial* lands were enjoyed in full property, and are therefore oppoſed to *feudal* or *beneficiary* poſſeſſions, which were received with limitations, and under the burden of military ſervice to the *grantors*.

The Ripuarians, the Burgundians, and, indeed, all the barba-ric

* In the Saxon times of King Ina, the proviſions paid for ten hides of land were as follows: 'Ex decem hydis, ad nutriendum, decem dolia mellis, tre-'centi panes, duodecim amphorae Wallicae cereviſiae, triginta ſimplices, duo 'adulti arietes, vel decem verveces, decem anſeres, viginti gallinae, decem 'caſei, amphora plena butyro, quinque ſalmones, viginti librae pondo pa-'buli, et centum anguillae ſolvantur.' *LL. Inae ap. Wilkins, p.* 25.

ric nations, appear to have had lands of partition or allodial property. *LL. Ripuar. tit.* 56. *LL. Angl. et Werin. tit.* 6. *LL. Baivvar. tit.* 2. *c.* 1. *l.* 3. *tit.* 11. *c.* 5. *tit.* 17. *l.* 2. *Capit. Kar. et Lud. lib.* 3. *l.* 20. *Marculph. Form.* 16. 18. 51. 62. 67. *ap. Lindenbrog.*

Some writers affirm, that the Salic lands were lands of *lot* or *partition*, and yet contend that they were *feudal*. This is certainly an abſurdity. It is to be confeſſed, notwithſtanding, that Du Cange, and many lawyers of great ability, have adopted this notion. *Diſſert.* 17. *ſur l'Hiſtoire de St. Louis*, *p.* 244. *Selden*, *vol.* 3. *p.* 1009 *. The authority againſt them is moſt expreſs and pointed. It is the text itſelf of the Salic law which actually treats *de alode*, and refers to no property that was not *allodial*. *LL. Sal. ap. Lindenbrog. p.* 342. What confounded Du Cange, was the following celebrated law of this text. 'De terra vero 'Salica

* Selden obſerves, that 'the beſt interpretation of *terra Salica*, is by our '*knight's fee*, or land holden by *knight's ſervice*.' I have an infinite veneration for the learning and abilities of this great man. I cannot, however, but differ from him on this occaſion. The *knight's fee* and *knight's ſervice*, were late inventions in the hiſtory of fiefs, and cannot be carried back to the early æra of the Salic law. Even if they could, they would ſtill be ineffectual to ſupport his concluſion.

'Salica nulla portio hereditatis *mulieri* veniat; ſed ad *virilem* '*ſexum* tota terrae hereditas perveniat.' He knew that women could not, in the commencement of fiefs, pretend to lands which were held by a military tenure; and, as they are thus barred from the Salic lands, he thence conceived that theſe muſt be *feudal.*

But the circumſtance of the excluſion of the women from the Salic lands is, by no means, to be accounted for on *feudal* principles. The women were excluded from property while the Germans were in their foreſts; and this law or uſage they carried into their conqueſts. It is thence that, in the lands of *lot* or *partition*, the women were not conſidered; and it is thus, that this difficulty in the Salic text is to be explained, without the neceſſity of conceiving the feudality of the Salic lands, in contradiction to the Salic law.

Though the barbarians reſpected highly their women, the admiſſion of them to land was altogether a new idea. For if, leaving the Salic law, we inquire into the allodial property, and the allodial laws of the other tribes, we ſhall find, that, even in theſe, the women were not admitted to land while there exiſted any male. The ideas of the barbarians required to enlarge before this admiſſion had place, and before they could ſo far violate their antient cuſtoms. The innovation, as might be expected, was gradual. In the title, accordingly, *de Alodibus* in the Ripuarian

Ripuarian text, we read, 'Dum virilis ſexus extiterit, *femina* in 'hereditatem aviaticam non ſuccedat.' *Lindenbrog. p.* 460. See alſo *LL. Anglor. et Werinor. tit.* 6. It is, I conceive, by this and ſimilar ordinances, that the celebrated Salic law, which impoſed on Du Cange, and on ſo many lawyers, is to be interpreted. Among the Salians and Franks, as well as among the other barbarous nations, when there were no males, the women were admitted to the property of the lands of *lot* or *partition.*

After having made theſe remarks, it is fit I ſhould give ſome account of the word *Allodium*, or *Alode*; and a learned Judge, who is ſtudious to cultivate literature in the intervals of buſineſs, and who has diſtinguiſhed himſelf by laborious and inſtructive compoſitions in an idle and a diſſipated age, has done me the honour to preſent me with the following communication on this ſubject.

'*Al-od*, in the Latin of the lower ages *allodium*; hence the 'adjective *allodialis*; and hence, from the analogy of language, '*allodially*, and *allodiality* may be formed. Of *Al-od* the 'French have made *Aleud*, *aleu.*

'As to the etymology of the word, there is a variety of opi-'nions; for learned men are apt to reject obvious etymologies, 'and to prefer thoſe which are more remote. It would ſeem to

'be-

'be a good rule in ſuch matters, that "the etymology which is "neareſt to the word, is the moſt probable."

'*Al* is *totus*, *integer*, *et abſolutus*. There is no occaſion for 'proving this: The ſenſe is in daily uſe among the northern 'nations of Europe. *Od* is *ſtatus*, or, *poſſeſſio*. The Scottiſh word '*had*, and the Engliſh *hold*, are derived from this ſource, and 'the word itſelf is ſtill viſible in the Engliſh compounds, *man-'hood*, *ſiſter-hood*, *maiden-hood*, &c. The Anglo-Saxon word, 'correſponding to this, is *Hod*, *ſtatus* or *poſſeſſio*. Thus, *Al-od*, 'is *totus integer et abſolutus ſtatus*, or *tota integra et abſoluta poſ-'ſeſſio*.

'The etymology of *Al-od* confirms the opinion of Selden and 'others as to the etymology of *Feod*, in the Latin of the lower 'ages *Feodum*, *Feudum*. *Fe* is *beneficium* or *ſtipendium*; *Od* or '*Hod*, is *ſtatus*; therefore, *Feod* is *ſtatus ſtipendiarius*, or *poſſeſſio* '*ſtipendiaria*. *Odal* is *Alod* inverted, *ſtatus integer*, or *poſſeſſio* '*tota et abſoluta*.

'There is no difference between *odal* and *udal*. The Scots 'turned the Norvegian *ore*, a denomination of weight, into *ure*, 'and, in like manner, they turned *odal* into *udal*. If the Norve-'gian *o* was pronounced as *oe*, the change is ſcarcely perceptible. 'After the ſame manner the French have turned *alod* into *aleud*.

'It

'It may be objected, that there are two ſyllables more in 'allodial than in *odal* or *udal*; and that, although etymologiſts 'often drop an embarraſſing ſyllable or two, yet that ſuch liber-'ties are not allowable. The anſwer is obvious. *Allodial* is 'an adjective; and the word *ſubject*, or *land*, or ſomething ſimi-'lar, is underſtood. But *odal* or *udal* is a ſubſtantive; and it is 'only from ignorance or miſapprehenſion, that the word is uſed 'as an adjective. Thus, in propriety of ſpeech, we ſay, 'The "lands in Orkney are to be conſidered as *udal*;' although, in 'common ſpeech, we ſay, 'The *udal lands* of Orkney,' and the "*udal poſſeſſion* in Orkney."

(5) Dr Robertſon has affirmed, that the barbarians, while in their original ſeats, were not, in conſequence of the condition of the landed property, brought under any poſitive or formal obligation to ſerve the community. *Hiſt. of Charles* V. *vol.* 1. *p.* 213.

It is obvious, however, that the partition of land received by the individual from the tribe, ſubjected him to ſerve the community. The perſon who did not ſerve it had no claim to any partition. Perſons under the military age had no partitions, becauſe they could give no ſervice. Perſons, who had attained this age, could give ſervice, and entitle themſelves to partitions. The former were parts of the *family*, the latter were members of the *republic*. See *Note* 2. and compare it with *Tacit. de Mor. Ger.* c. 13.

*c.* 13. Of this law of partition, it was even a conſequence, that the coward was a criminal, becauſe he could give no ſervice, and was unable to entitle himſelf to a ſubſiſtence or partition. He was therefore deemed unworthy of exiſtence, and put to death, or expelled beyond the frontiers of his nation. *Tacit. de Mor. Germ. c.* 12.

I have ſaid, that the lands of lot or partition, of which the grant or uſe was the diſtinction of the freeman and the citizen in the days of Tacitus, were alſo given after the conqueſts of the barbarians, under the general obligation of ſerving the community. And here is my evidence.

'Quicunque *liber homo* a comite ſuo fuerit ammonitus, aut 'miniſtris ejus, ad *patriam defendendam*, et ire neglexerit, et ex- 'ercitus ſupervenerit ad iſtius regni vaſtationem vel contrarieta- 'tem, fidelium noſtrorum capitali ſubjaceat ſententiae.' *Capitularia apud Baluz. tom.* 2. *p.* 325.

'Si aliquis in *alode* ſuo quiete vivere voluerit, nullus ei ali- 'quod impedimentum facere praeſumat, neque aliud aliquid ab 'eo requiratur, niſi ſolummodo ut ad *patriae defenſionem pergat.*' *Capit. Car. Calv. Ibid. p.* 264.

'Et qui ad *defenſionem patriae* non occurrerint, ſecundum *anti-*

'*quam*

'*quam conſuetudinem* et capitulorum conſtitutionem judicentur.' *Capit. Car. Cal. tit.* 36. *c.* 27. *Ibid. p.* 187.

Hence it is to be concluded, that the ſtipulation of ſerving the community was very *antient*; and thus too, the opinion I maintain, that this obligation was known to the old Germans, receives a confirmation. In reality, the ſenſe of the obligation muſt have been ſtronger *before* than *after* their conqueſts. The citizen of a ſmall community enters with eaſe into its views, and is zealous to promote them. The arrangements, on the contrary, of a great kingdom, are not eaſily perceived. A plain individual does not know the motives and the agents which put every thing into motion. His attention is more turned from the public, and penal regulations are neceſſary to preſerve him in his duty. Hiſtory confirms this remark. For, early after the barbaric conqueſts, regulations of this kind were made; and *allodial* proprietors, to avoid ſerving the community, deviſed the fraud of aſſigning their lands to the church, and of holding them under its exemptions and immunities.

Thoſe, it is obſervable, who held poſſeſſions merely *allodial*, could only be called out in foreign wars, and againſt the enemies of the ſtate. As they held of no ſuperior or lord, they had no concern in private quarrels, and made no part in the feudal aſſociation. This circumſtance, if judged by modern ideas,

was advantageous. It was, in fact, however, the reverſe, and operated as a cauſe of the converſion of *allodium* into *tenure*.

(6) *Monſr. Bignon*, in his notes to Marculphus, expreſſes, with a delicate preciſion, the diſtinction between *allodial* lands, or the lands of *partition*, and the lands of the *fiſc*. 'Omnia 'namque praedia, aut *propria* erant, aut *fiſcalia*. Propria ſeu '*proprietates* dicebantur quae nullius juri obnoxia erant, ſed op- 'timo maximo jure poſſidebantur, ideoque ad heredes tranſibant. 'Fiſcalia vero, *beneficia* ſive fiſci vocabantur, quae a rege ut plu- 'rimum, poſteaque ab aliis, ita concedebantur, ut certis legibus 'ſervitiiſque obnoxia, cum vita accipientis finirentur.' *Not. ad Marculph. ap. Baluz. tom.* 2. *p.* 875.

It is even from *fiſcus* that the term *fief* was formed; and, though the lands of the *fiſc* meant originally only the benefices granted out by the ſovereign, they came to expreſs the ſubinfeudations of the crown-vaſſals. *Du Cange*, *voce Fiſcus*, *Munus Regium*. *Aſſiſes et bons uſages du Royaume de Jeruſalem*, *avec des notes par Gaſpard Thaumas de la Thaumaſſiere*, *p.* 103. 245.

(7) 'Principes jura per pagos vicoſque reddunt. . . . . Inſignis 'nobilitas aut magna patrum merita, principis dignationem eti- 'am adoleſcentulis aſſignant. Ceteris robuſtioribus ac jampri- 'dem probatis aggregantur. . . . . Magna comitum aemulatio, 'quibus

'quibus primus apud principem ſuum locus; et principum cui 'plurimi et acerrimi comites. Haec dignitas, hae vires, magno 'ſemper electorum juvenum globo circumdari, in pace decus, in 'bello praeſidium. . . . . Cum ventum in aciem, turpe princi- 'pi virtute vinci, turpe comitatui virtutem principis non adae- 'quare. . . . . Illum defendere, tueri, ſua quoque fortia facta glo- 'riae ejus aſſignare, praecipuum ſacramentum eſt. Principes pro 'victoria pugnant; comites pro principe.' *Tacit. de Mor. Germ.* *c.* 12. 13. 14.

(8) Of the notion that tribes were the *vaſſals* of tribes, I have exhibited the moſt convincing proofs in another treatiſe. *Hiſt. Diſſert. concerning the Antiq. of the Eng. Conſtit. part* 2. As the ſubject, however, is highly curious and important, I ſhall here offer ſome additional obſervations concerning it.

The great bond of the confederacies, and the attachments of the ſtates of the Gauls and Germans, was the *land* aſſigned by a *ſuperior* community to an *inferior* one. In conſequence of this aſſignment, the latter owed ſervice in war to the former, and was entitled to its protection. In the language of *Caeſar*, it was the *client* tribe. While land was yet the property of nations, and unconnected with individuals, the idea was natural, and almoſt unavoidable. Arioviſtus, a prince of a German community, having, with his chiefs and retainers, made a conqueſt in Gaul, the territory of the vanquiſhed people became the property.

ty of his nation; and, it was about to beſtow a large tract of the acquiſition on the Harudes, under the burden of their military aid or aſſiſtance, when Caeſar interfered in the Gaulic affairs. *Caeſar, de Bell. Gall. lib.* 1. *c.* 35—46.

The idea of tribes in union, without their mutually furniſhing *protection* and *aſſiſtance*, and without the medium of a grant of *land*, could not be conceived by the German and Gaulic nations. The *client* or *vaſſal* tribes of Arioviſtus, were the Marcomani, Tribocci, Vangiones, Harudes, Nemetes, and Seduſii. *Caeſar, de Bell. Gall. lib.* 1. *c.* 51. The Ubii, at one period, were the *vaſſal* tribe of the Suevi. *Ib. lib.* 4. *c.* 3. In an after period, when the Romans imitated the manners of the Gauls and Germans, they were aſſigned *land* on the banks of the Rhine, under the obligation of *military* ſervice. 'Super ipſam 'Rheni ripam collocati, *ut arcerent*, non ut cuſtodirentur.' *Tacit. de Mor. Germ. c.* 28. Caeſar, at the requeſt of the Ædui, permitted the Boii to remain in Gaul; and they became the clients or confederates of that people, who aſſigned them *land* on their confines. 'Boios, petentibus Æduis, quod egregia virtute 'erant, ut in finibus ſuis collocarent, conceſſit; quibus illi *agros* 'dederunt.' *De Bell. Gall. lib.* 1. *c.* 28. The extent of land allotted by a ſuperior community to an inferior one, was proportioned to the numbers and the valour of the latter. And, it was this way of thinking which actuated the Helvetii, when they ſaid, that their territories were not ſuited to their populouſneſs

and

and military glory. 'Pro multitudine autem hominum, et pro 'gloria belli atque fortitudinis, anguſtos ſe fines habere arbitraban- 'tur.' *Id. lib.* 1. *c.* 2.

Thus, the ſtate of land among the Gaulic and German nations directed their *political* condition. This circumſtance eſcaped not the Romans; and the uſe made of its knowledge by the Emperors, though little attended to, is worthy of remark. To a body of the Vandals, Conſtantine, with a view to the aid of their arms, aſſigned a portion of Pannonia. The aſſignment of land by the Romans to the Burgundians, that they might aſſiſt them in oppoſing the Wiſigoths, gave riſe to the Burgundian empire in Gaul. And Juſtinian granted the lands and poſſeſſions of the Oſtrogoths in Pannonia to the Longobards, under the burden of their defending that country againſt the Gepidae, the Heruli, and other barbarous nations. *Jornand. de Reb. Get. c.* 22. *Caſſiodor. Chron. Procop. lib.* 3.

Amidſt a multitude of examples, to the ſame purpoſe, which might be produced, it is proper to take notice of the monarchy of the Franks. Different nations, overpowered by the Franks, became parts of their monarchy, by receiving poſſeſſions from them, and acknowledging their ſuperiority. For the lands and protection afforded them, they gave allegiance and ſervice. In other reſpects they acted under their own dukes or princes, and under their own inſtitutions. I ſpeak of the principalities or

duchies

duchies of Bavaria, Aquitain, and Suabia. The Bojoarii, Bojarii, or Boii, for ſo the Bavarians are called in writers of the middle ages, were conquered by the Franks, and, accepting lands from them, acknowledged their ſuperiority. An old hiſtorian, recording this tranſaction, has theſe words: 'In bellis auxilio Fran-'cis ſunt Boii; coſdem pro amicis et hoſtibus habeant; ceterum 'ſuis inſtitutis ac moribus liberi vivant.' *Aventinus*, *Annal. Boior. lib.* 3. This connection or vaſſalage is even expreſſed in their laws. *LL. Baivvar. tit.* 2. *c.* 1. *ap. Lindenbrog. p.* 404. Such alſo was the caſe of the Dukes of Aquitain and Suabia. Under the Franconian kings of the firſt race, they owed fidelity and military ſervice in war, for the lands they enjoyed, and yet governed in their own dominions. Theſe things mark the attachment of nations to their antient uſages, and illuſtrate the idea that communities were firſt the vaſſals of communities.

What is not incurious, one of the greateſt difficulties in developping the hiſtory of the barbaric tribes, has its ſource in theſe connections I have mentioned. The inferior, or vaſſal tribes, are often meant and recorded under the names of the ſuperior ones. Thus, under the general appellation of *Gothi*, there are included the Thuringi, Gepidae, Pucini, Scirri, and other tribes. The hiſtorical confuſions that were neceſſarily to ariſe from this practice are many, and often not to be diſentangled.

(9) It

(9) It is obſervable, that the old German ſtates affected, from grandeur, to have around them a vaſt extent of *waſte* territory. 'Una ex parte a Suevis circiter millia paſſuum DC agri *vacare* 'dicuntur.' *Caeſar, de Bell. Gall. lib.* 4. *c.* 2. 'Civitatibus 'maxima laus eſt quam latiſſimas circum ſe vaſtatis finibus *ſoli-* '*tudines* habere.' *Id. lib.* 6. *c.* 22. 'Bella cum finitimis gerunt, 'ut quae circa ipſos jacent *vaſta* ſint.' *Mela, lib.* 3.

What is remarkable, after land was connected with individuals, and when chiefs diſtributed portions of their poſſeſſions to their followers, they affected alſo *waſtes* of this kind. The Lord of a manor, after having aſſigned to his ſervants a tract of ground for the maintenance of his houſe and hoſpitality, gave out other diviſions to his vaſſals and tenants, for the ſupport of his political greatneſs; and theſe purpoſes being anſwered, a large proportion of territory remained often unemployed by him. This *waſte* dominion gave an idea of his power, and ſerved to excite, in the ſtranger, a ſentiment of terror. On this tract of land, the inhabitants of the hamlet, connected with his caſtle, were tempted to feed their cattle. In the courſe of time, he loſt all connection with it. Their connection was recent and in uſe. Hence *common paſture* and *commons*.

I will venture another conjecture. It was, perhaps, from the idea of magnificence attending the poſſeſſion of a vaſt portion of uncultivated territory, more than for the purpoſes of hunting,

that the kings of Europe affected, of old, to have extenſive foreſts. A deer-park is ſtill flattering to the *magnificence* of the rich, in proportion to its extenſiveneſs; though hunting be no amuſement of the proprietor.

(10) It has puzzled the learned to diſcover the nation of the barbarians which firſt gave a beginning to fiefs. No inquiry could be more frivolous. In all of them they muſt have appeared about the ſame period. And they prevailed in all of them in conſequence of the ſimilarity of their ſituation on their conqueſts, and in conſequence of their being governed by the ſame cuſtoms. It is not, therefore, to the principle of imitation that their univerſality is to be aſcribed.

The annals of France make mention of fiefs in the age of Childebert. The Longobards, at an early period, introduced them into Italy; and the cuſtoms and laws which relate to them ſeem to have advanced rapidly among this people. *Giannone, Hiſt. of Naples, book* 4. *ſect.* 3. In England, there is little doubt that the feudal law was known in the Saxon times; and on this ſubject I refer, with pleaſure, to what has been lately advanced by Mr Whitaker, in his Hiſtory of Mancheſter; a book valuable for deep learning, original thought, and uncommon ingenuity.

In

In Spain, the introduction of the feudal tenures preceded the devaſtations of the Saracens or Moors, which began in the year 710. Among the Goths, who eſtabliſhed the monarchy of Spain, lands were granted for ſervice and attachment; and the receiver was the retainer of the grantor. He was ſaid to be *in patrocinio*; and, if he refuſed his ſervice, he forfeited his grant. It alſo appears, that the retainer, or vaſſal, ſwore fealty to his patron or lord. And it was on this ſcheme that their militia was regulated. *LL. Wiſigoth. lib.* 5. *tit.* 3. *l.* 4. *tit.* 7. *l.* 20.

The Wiſigothic laws were firſt publiſhed by the celebrated Pithoeus, and are chiefly to be valued on account of their high antiquity. But how they came to ſurvive the Mooriſh conqueſts, is an incident which I cannot explain. They ſerved as the mine, and gave materials for the code of Spaniſh juriſprudence, termed the *forum judicum*, or the *fuero juzgo;* a circumſtance which ſeems to prove their authenticity, and which the learned Mr Barrington muſt have forgot, when he conceived the latter to be the moſt antient collection of laws in Europe. *Obſervations on the Statutes*, 3*d edit. p.* 9.

## SECTION II.

(1) 'TERRA . : . . . pecorum foecunda, ſed plerumque improcera: Ne armentis quidem ſuus honor, aut gloria frontis: Numero gaudent: Eaeque *ſolae et gratiſſimae opes ſunt.*' *Tacit. de Mor. Germ. c.* 5.

(2) My Lord Kaims aſcribes to the meanneſs of women, and to the diſgrace in which they are held, their want of property in rude times. They appear, notwithſtanding, to be in high eſtimation in ſuch times; and their poverty, we ſee, or their want of property, is no mark or conſequence of their meanneſs and diſgrace; but a reſult of the nature of things. *Sketches, vol.* 1. *p.* 203.

(3) The eldeſt ſon, it would appear, came in place of the father, and continued the family. 'Inter familiam,' ſays *Tacitus*, 'et penates, et jura ſucceſſionum, equi traduntur: Excipit filius, 'non *ut cetera maximus natu*, ſed prout ferox bello et melior.' *De Mor. Germ. c.* 32. This teſtimony in favour of the eldeſt

eldeſt ſon, and the right of primogeniture, is the more ſtrong, as being included in an exception to the general rule. I know that Sir Henry Spelman, in his Gloſſary *, Mr Harris, in his Hiſtory of Kent †, Mr Lombard, in his Perambulation of the ſame county ‡, and Mr Barrington, in his Obſervations on the Statutes ‖, have given it as their opinion, that, in Germany, the ſons ſucceeded equally to the father; and it is common to account, in that way, for the origin of the cuſtom of *gavel-kind* §, which prevailed in Kent, and in other counties of England. The words, however, of *Tacitus* already cited are a demonſtration of the impropriety of theſe notions.

It is true, notwithſtanding, that the authors under remark found or rely upon another paſſage of the ſame writer; but I conceive that the ſenſe of it muſt have eſcaped them. The paſſage is as follows. 'Heredes ſucceſſoreſque ſui cuique liberi: 'Et nullum teſtamentum: Si liberi non ſunt, proximus gradus 'in poſſeſſione, fratres, patrui, avunculi.' *De Mor. Germ. c.* 20. Here,

* Voc. Gaveletum. † p. 457. ‡ p. 584. ‖ p. 115. 3d Edit.

§ 'Gaveletum, *Gavelkind.*] Priſca Anglo-Saxonum conſuetudo e Germa-'nia delata, qua omnes filii ex aequis portionibus, patris adeunt haereditatem '(ut filiae ſolent, prole maſcula deficiente). Fratres ſimiliter defuncto ſine ſo-'bole fratre, et nullo exiſtente fratre, ſorores pariter.' *Spelm. Gloſſ. p.* 259.

Here, in reality, even allowing that the Germans had been acquainted with a property in land, which they conſtantly ſuppoſe, there is no mention of the *equal partition* of it. The children muſt have ſucceeded ſingly and in courſe; in defect of theſe, the brothers; and, on the failure of them, the uncles.

This paſſage, and the former, throw mutually a light to one another; and, from the conſideration of both, I think it clear, that the meaning I impute to them is juſtly to be inferred.

A difficulty, however, more knotty preſents itſelf. As land was among theſe nations the property of the ſtate, to what does *Tacitus* allude in the paſſage before us? Conjectures are to be hazarded where proofs are wanting. In general, I ſhould fancy, he muſt refer to moveables; and, perhaps, he may allude to the *German houſe* and the *encloſure* connected with it. 'Colunt diſcreti ac diverſi ut fons, ut campus, ut nemus placuit. . . . . 'Suam quiſque *domum ſpatio* circumdat.' *Tacit. de Mor. Germ. c.* 16. At leaſt, it is not unnatural to think, that the cabin and its encloſure, as the ideas of property evolved, might be conſidered as appertaining more peculiarly to individuals, and that thence continuing in their poſſeſſion, they might go to their poſterity.

It

It was thus in other rude communities. Among the Hindoos, it appears, by very curious laws, that the landed property firſt acquired by individuals, was what is termed 'The glebe-'lands, houſes, and orchards' *Code of Gentoo laws, ch.* 3. In Otaheite, and in Eaſtern Iſland, or Davis's Land, there were plantations laid out by line, of which the beauty ſtruck Captain Cook. Theſe, he conjectures, were the *private property* of the chiefs. *Voyage round the World, vol.* 1. *p.* 294. His conjecture is very ſolid. Theſe ſpots correſpond to the encloſure of the German houſe, and to the glebe-lands of the Gentoo.

(4) '*Dotem* non uxor marito, ſed uxori *maritus* offert.' *Tacit. de Mor. Germ. c.* 18. This remarkable uſage continued after the German nations had made conqueſts, and is every where to be met with in their laws.

'Non amplius unuſquiſque in puellae vel mulieris nomine *do-*'*tis* titulo conferat vel conſcribat, quam quod decimam partem 'rerum ſuarum eſſe conſtiterit.' *LL. Wiſigoth. lib.* 3. *tit.* 1. *l.* 5.

'Quia mulieres, quibus dudum conceſſum fuerat de ſuis *do-*'*tibus* judicare, quod voluiſſent, quaedam reperiuntur, ſpretis fi-'liis vel nepotibus, eaſdem *dotes* illis conferre, cum quibus conſti-'terit nequiter eas vixiſſe: Ideo neceſſe eſt illos exinde percipere 'commodum pro quibus creandis fuerat aſſumptum conjugium.

'Denique

'Denique conſtituentes decernimus, ut de *dote* ſua mulier habens 'filios vel nepotes, ſeu cauſa mercedis eccleſiis vel libertis con- 'ferre, ſive cuique voluerit, non amplius quam de quarta parte 'poteſtatem habeat. Nam tres partes legitimis filiis aut nepoti- 'bus, ſeu ſit unus ſive forſitan plures, abſque dubio relictura 'eſt. De tota interim *dote*, tunc facere quid voluerit, erit mu- 'lieri poteſtas, quando nullum legitimum filium, filiamve, nepo- 'tem vel neptem ſuperſtitem reliquerit. Verum tamen faemi- 'nas, quas contigerit duobus viris aut amplius nubere, atque 'ex eis filios procreare, non eis licitum erit *dotem* ab alio ma- 'rito acceptam, filiis aut nepotibus ex alio viro genitis dare: Sed 'unuſquiſque filius filiave, nepos aut neptis, ex ipſa linea pro- 'creati, *dotem* quam avus aut pater illorum conceſſerat, poſt muli- 'eris obitum per omnia conſequuturi ſunt.' *LL. Wiſigoth. lib.* 4. 'tit. 5. *l.* 2. *ap. Lindenbrog.*

'Mulier ſi ad alias nuptias tranſierit, omnia perdat: *Dote* 'tamen ſua quam a marito ſuo acceperat, quamdiu vixerit, uta- 'tur, filio proprietate ſervata.' *LL. Burgund. tit.* 62. *l.* 2. See farther *LL. Wiſigoth, lib.* 3. *tit.* 2. *l.* 8. *lib.* 5. *tit.* 2. *l.* 4. *LL. Ripuar. tit.* 37. *LL. Saxon. tit.* 7. *LL. Longobard. lib.* 1. *tit.* 4. The curious reader may alſo conſult the forms or writings which conſtituted the *dos*, or dower. *Form. Solen. ap. Baluz. tom.* 2. See *Appendix*, *No.* 1.

In

In England, the doctrines and hiſtory of the *dos* are to be ſeen in *Glanvil*, *Bracton*, *Britton*, in the book called *Fleta*, and in *Littleton*. 'Dos, or *dower*,' ſays my Lord *Coke*, 'in the 'common law, is taken for that portion of lands or tenements 'which the wife hath for terme of her life of the lands or te-'nements of her huſband after his deceaſe, for the ſuſtenance 'of herſelfe, and the nurture and education of her children.' 1. *Inſtit. p.* 31. It is curious to find in the woods of Germany, a rite or cuſtom that makes a figure in all the laws of Europe.

My Lord Kaims, whom I am aſhamed to contradict ſo often, has ſtrangely miſunderſtood this ſubject. 'In Germany,' ſays he, 'when Tacitus wrote, very few traces remained of poly-'gamy. Severa illic matrimonia, nec ullam morum partem 'magis laudaveris; nam prope ſoli barbarorum ſingulis uxori-'bus contenti ſunt, exceptis admodum paucis, qui non libidine, 'ſed ob nobilitatem, plurimis nuptiis ambiuntur. When poly-'gamy was in that country ſo little practiſed, we may be cer-'tain, *the purchaſing wives* did not remain in vigour. And 'Tacitus accordingly, mentioning the general rule, dotem non 'uxor marito, ſed uxori maritus offert, explains it away by ob-'ſerving, that the only *dos* given by the bridegroom, were mar-'riage-preſents, and that he at the ſame time received marriage-'preſents on the bride's part.' *Sketches*, *vol.* 1. *p.* 192.

It would pain me to open up, with minuteneſs, all the miſtakes which are crouded into this paſſage. I ſhall juſt glance

at them. Polygamy, in fact, never prevailed among the Germans; and of this, the treatiſe of Tacitus, and the laws of the barbarians after their conqueſts, are the moſt ſtriking and deciſive proofs. See *Ch.* 1. *Sect.* 3. *Note* 14. Neither were women *bought* in Germany, nor does Tacitus affirm, that the *dos* conſiſted of marriage-preſents. The interchange of preſents by the married couple and the *dos*, were ſeparate and diſtinct. The intention of the former I have already explained. See *Ch.* 1. *Sect.* 3. *Note* 2. What the latter was, I have juſt now ſaid; and I appeal to the authorities which ſupport my notion.

The ſource of all theſe errors is, the idea entertained and inculcated by this eminent writer, that the women, in rude times, are of ſo little conſideration, that they are objects of traffic. Hence he conceived, that the *dos* muſt be the *purchaſe-money* of the wife. That it was not ſo, we have ſeen; but, as the opinion has been pretty generally received, and has got the ſanction of Profeſſor Millar, as well as that of his Lordſhip, it is proper to conſider its propriety with ſome attention.

Though it every where appears, from the examination of the barbaric laws, and from the books of the earlieſt lawyers, that the *dos* or *dower* was the proviſion allotted for the maintenance of the wife, it is not to be denied, that, in antient legal monuments, there occur the expreſſions *donatio nuptialis*, *pretium uxoris*, *et pretium dotis*. And theſe, I perceive, have contributed to induce Mr Millar to go into the fancy, that antiently, in Europe,

Europe, the *dos* was the price, or purchaſe-money of the wife. *Obſervations on the diſtinction of ranks*, *p.* 30. 2. *edit.* If, however, I am not very widely miſtaken, theſe expreſſions apply, in no caſe, to the purchaſe-money of the wife; but expreſs the proviſion made for her, in the event of the death of the huſband. This, I think, appears from the laws of the barbarians.

'Si qua mulier duntaxat Burgundia poſt mariti mortem ad ſecun-
'das aut tertias nuptias, ut adſolet fieri, fortaſſe tranſierit, et filios
'habuerit, ex omni conjugio, *donationem nuptialem* dum advivit
'uſu fructu poſſideat: Poſt ejus mortem ad unumquemque fi-
'lium, quod pater ejus dederat, revertatur: Ita ut mater nec do-
'nandi, nec vendendi, nec alienandi de his rebus quas in *dona-*
'*tione nuptiali* accepit, habeat poteſtatem.' *LL. Burgund. tit.* 24.

It is ſaid of one Folco, that he gave to his wife Gerlint all he had; 'Omnia ſua propter *pretium* in mane quando ſurrexit.' *Giannone*, *Hiſt. of Naples*, *vol.* 1. *p.* 274. But this was not the price or value of the wife. It was the morgengabe, or morning-preſent, about which there is ſo much in the barbaric laws, and of which the extravagance was ſo great, that regulations were made to repreſs it.

As to the expreſſion, *pretium dotis*, we meet with it in the following ordinance. 'Si puella ingenua ad quemlibet ingenuum

'venerit ea conditione, ut eum ſibi maritum acquirat, prius cum 'puellae parentibus conloquatur; et ſi obtinuerit, ut eam uxo-'rem habere poſſit, *precium dotis* parentibus ejus, ut juſtum eſt, 'impleatur.' *LL. Wiſigoth. lib.* 3. *tit.* 2. *l.* 8. The dower, it ſeems, was at times given to the parent, or to the relation of the woman, to be kept for her uſe. This is fully explained by the regulation which follows. '*Dotem* puellae traditam pater exi-'gendi vel conſervandi ipſi puellae habeat poteſtatem. Quod ſi 'pater aut mater defuerint, tunc fratres vel proximi parentes, '*dotem* quam ſuſceperint, ipſi conſorori ſuae ad integrum reſtitu-'ant.' *LL. Wiſigoth. lib.* 3. *tit.* 1. *l.* 6. *ap. Lindenbrog.*

I know that the cuſtom of preſenting *money* at marriages came to prevail among the German and Gothic nations, and among the Franks more particularly. In *Fredegarius*, for example, we read this deſcription of the eſpouſals of Clotildis. 'Legati offe-'rentes *ſolidum et denarium*, ut mos eſt Francorum, eam partibus 'Clodovei ſponſant.' *Geſt. Franc. c.* 18. Let us not, however, be deceived. Here no purchaſe was made. The money preſented was only the ſymbol of a contract. This is illuſtrated by the *Arra nuptialis* of the Wiſigoths. 'A die latae hujus legis 'decernimus, ut cum inter eos qui diſponſandi ſunt, ſive inter e-'orum parentes, aut fortaſſe propinquos, pro filiorum nuptiis 'coram teſtibus praeceſſerit, definitio, et annulus *arrarum* * no-'mine

* *Arrhes* or *arres* in France, *earneſt* in England, and *arles* in Scotland, ſtill expreſs the money advanced in token that a bargain is concluded.

'mine datus fuerit vel acceptus, quamvis ſcripturae non inter-
'currant, nullatenus promiſſio violetur, cum qua datus eſt an-
'nulus, et definitio facta coram teſtibus.' *LL. Wiſigoth. lib.* 3. *tit.* 1. *l.* 3.

But what refutes, in the moſt deciſive manner, the notion that the wife was *purchaſed* with the money of the huſband, is the following peculiarity. If a free man married his ſlave, and intended that his children by her ſhould ſucceed to his fortune, it was neceſſary that he ſhould make her a preſent of her liberty. And, what is remarkable, one of the methods of making her free, was the very act which is talked of as buying the property of the wife; it was the aſſigning her a *dower* or a morgengabe. 'Si quis ancillam ſuam propriam matrimoniare volu-
'erit ſibi ad uxorem, ſit ei licentia: Tamen debeat eam liberam
'thingare, et ſic facere liberam, quod eſt Widerboram, et
'legitimam per garathinx, id eſt, per libertatis donationem; vel
'per gratuitam donationem, id eſt *morgengabe;* tunc intelligatur
'eſſe libera et legitima uxor, et filii qui ex ea nati fuerint legitimi
'heredes efficiantur.' *LL. Longobard. lib.* 2. *tit.* 1. *l.* 8. Among the Longobards the *dower* and the morgengabe came to be ſynonymous, and were fixed at the fourth part of the ſubſtance of the huſband *. *LL. Longobard. lib.* 2. *tit.* 4.

I

* A very ſingular exception, to the doctrine I advance in this note, is to be found in the records of England, and I am ſurprized that it has eſcaped the learned indu-
ſtry

I might confirm theſe remarks by attending to the manners and cuſtoms of other nations. Among the inhabitants, for example, of Hindoſtan, while they were in a ſimilar ſtate of manners with the barbaric ſtates, the ordinances and uſages in matrimonial concerns, have a ſtriking conformity with thoſe I ‘ have

ſtry of the writers whom I venture to oppoſe. I truſt, notwithſtanding, that my general concluſion is not to be affected by it. The caſe, however, is ſo odd, that I will give it to the reader in the words of my author.

‘ John Camois,’ ſays *Camden*, ‘ ſon of Lord Ralph Camois, (a precedent not to be ‘ parallelled in that or our own age), *out of his own free will* (I ſpeak from the parliament rolls themſelves, Parl. 30. Ed. I.) *gave and demiſed his own wife*, Margaret, ‘ daughter and heir of John de Gaideſden, to Sir William Painel, knight; *and to ‘ the ſame* [William] *voluntarily gave, granted, releaſed, and quitclaimed, all the goods ‘ and chattels which ſhe had, or otherwiſe hereafter might have, and alſo whatever was in ‘ his hands, of the aforeſaia* Margaret’s *goods and chattels, with their appurtenances. So ‘ as neither himſelf, nor any other in his name, might, nor for ever ought to claim or challenge ‘ any intereſt in the aforeſaid* Margaret, *from henceforth, or in the goods or chattels of the ‘ ſaia* Margaret: Which is, what the antients ſaid in one word, *ut omnia ſua ſecum ‘ haberet*, that ſhe ſhould take away with her all that was her’s. By occaſion of ‘ which grant, when ſhe demanded her *dower* in the manour of Torpull, an eſtate ‘ of John Camois, her firſt huſband, there commenced a memorable ſuit. But ſhe ‘ was caſt in it, and ſentence paſſed, *that ſhe ought to have no dower from thence.*’ *Britannia, vol. 1. p. 205.*

Even this example, however, of the ſale of a wife, confirms the idea I inculcate as to the *dos* or dower.

have now deſcribed. This is evident from the code of Gentoo laws *.

'The woman's property,' ſay theſe laws, 'is whatever ſhe re-'ceives during the *ayàmmi ſhadee*, the days of marriage.

'When a woman dies, then, whatever effects ſhe acquired 'during the *ayàmmi ſhadee*, even though ſhe hath a ſon living, 'ſhall firſt go to her unmarried daughter; if there is but one 'unmarried daughter, ſhe ſhall obtain the whole; if there are 'ſeveral unmarried daughters, they all ſhall have equal ſhares.'

Here there is clearly the *dower* of the barbarians, and its deſtination on the deceaſe of the wife, in a given or ſuppoſed ſituation. There is ſomething more. For the woman, among the Hindoos, as well as among our barbarians, might acquire other property beſide the dower, during the days of marriage. This is illuſtrated by the following regulations.

The woman's property among the Hindoos is alſo 'whate-'ver ſhe may receive from any perſon, as ſhe is going to her 'huſband's houſe, or coming from thence.

'Whatever

* Or Ordinations of the Pundits, from a Perſian tranſlation made from the original, written in the Shanſcrit language. London, printed in the year 1776

'Whatever her huſband may at any time have given her; 'whatever ſhe has received, at any time, from a brother; and 'whatever her father and mother may have given her.

'Whatever jewels or wearing apparel ſhe may have received 'from any perſon.'

Here we have, obviouſly, the marriage-preſents of the relations and friends, as among the barbarians; and, in the gifts of the huſband, there is a counter part to the morgengabe of our forefathers, which is ſtill farther explained by the following circumſtance.

The form of marriage among the Hindoos, termed *aſhore*, is deſcribed to be 'when a man gives money to a father and mo-'ther, on his marrying their daughter, and alſo gives ſomething 'to the daughter herſelf.'

Here there is not only the *dos* or dower, to be kept by the relations for the uſe of the bride, but the morgengabe, or morning-preſent, in the diſpoſal of the bride herſelf; peculiarities which conſtituted the general characteriſtics of theſe tranſactions among the barbarians.

This coincidence is probably to be found in all nations, in certain ages or periods of their hiſtory. It is an evidence of the uniformity

uniformity of the manners of man in the moſt diſtinct and diſtant regions; and it marks ſtrongly the importance of women in the early times of ſociety and civilization. *Code of Gentoo Laws, ch.* 2.

It would be irkſome to proſecute this ſubject at greater length. Law and hiſtory uniformly concur to inform us, that antiently, in Europe, the *dos* was the proviſion allotted to the wife, and not the price paid for her. The cuſtoms of other nations offer their teſtimony to the ſame purpoſe. And natural affection and reaſon, the generoſity of manners in rude times, and the limited ideas of property which then prevail, all join to ſupport the concluſion. Yielding to the united force of theſe particulars, I ſcruple not to contradict poſitions which have the ſanction of diſtinguiſhed names.

(5) In the proceſs of time, regular forms or acts were invented for the conſtitution of the *dower*. Four methods of the dower prevailed more particularly over Europe, and, on that account, it is proper to recite and to explain them. Theſe were the dower *ad oſtium eccleſiae*, the dower *ex aſſenſu patris*, the dower by the *cuſtom* of particular places, and the dower *de la plus belle*. And from theſe peculiarities, alſo, there reſults the moſt clear and deciſive proof, that the *dos* was not the purchaſe-money of the wife, but the proviſion for her maintenance.

1. The dower *ad oſtium eccleſiae* took place when the bridegroom, having come to the door of the church or monaſtery where he was to be married, and having plighted his faith to the woman, and received hers, made public mention of the quantity and proportion of the land he deſigned for her *dower*. In conſequence of this tranſaction, ſhe might take poſſeſſion, on his death, of the proviſion thus allotted to her.

2. The dower *ex aſſenſu patris* took place when the ſon endowed his wife, with conſent of his father, in the lands to which he was to ſucceed. In this caſe, the wife, on the demiſe of the huſband, was to enjoy the portion aſſigned to her in the eſtate of the father.

3. By the *cuſtom* of ſome counties, cities, and boroughs, the woman had, for her *dower*, the half of her huſband's poſſeſſions, or the whole.

4. The dower *de la plus belle* had place when a perſon, for example, being ſeiſed of forty acres of land, of which he held twenty by knight-ſervice, and twenty in ſoccage, took a wife, had a ſon, and dying, left him under age. The lord of whom the land was held in knight-ſervice, took poſſeſſion of the twenty acres, as guardian of the minor *in chivalry*; and the mother entered into the enjoyment of the other twenty, as guardian *in ſoccage*. In this ſituation, the mother might bring a writ

writ of *dower* againſt the guardian in chivalry, to be endowed of the tenements holden in knight-ſervice. But the guardian in chivalry, pleading in his defence, that ſhe is guardian in ſoccage, might require from the court that ſhe be adjudged to endow herſelf in the *faireſt of the tenements* ſhe poſſeſſes. And, if ſhe could not ſhow that the property in ſoccage was unequal to the purpoſe of the dower, the guardian in chivalry retained the lands holden of him during the minority of the heir. The woman, then aſſembling her neighbours, took poſſeſſion, in their preſence, of *the faireſt part* of the ſoccage lands, to hold them during her life, under the title of the *dower de la plus belle. Littleton, ch. 5. The Comments of Sir Edward Coke, and Monſ. Houard, and the Gloſſaries.*

It is thus, that the ſimple regulation, mentioned by *Tacitus*, grew in time various and complicated. It even yet makes a figure in our laws. It is to be ſeen in the proviſions they hold out for the widow. And, it may teach us to ſuſpect, that enactments, which appear to be deeply founded in legiſlative wiſdom, are often nothing more than improvements of the uſages which natural reaſon and expediency have ſtruck out in a barbarous age.

(6) The laws of the different nations of the barbarians vary in the dower or proviſion they ordained. The Longobardic laws made it the fourth part of the eſtate of the huſband. *LL. Longobard.*

*Longobard. lib.* 2. *tit.* 4. *l.* 1. The Wiſigothic conſtitutions made it the tenth part of the ſubſtance of the huſband. *LL. Wiſigoth. ap. Lindenbrog. p.* 53. And, in England, the legal dower conſiſted of the third part of the lands or tenements of the huſband. *Coke on Littleton, p.* 31.

(7) '*Morgin* Germanice ſignificat *mane* et *gab*, *donatio*, unde 'dicitur *morgengab*, donatio facta mane.' *Gloſſ. Lindenbrog. p.* 1441. 'De civitatibus vero . . . . . quas Gaileſuindam 'tam in dote, quam in *morganegiba*, hoc eſt, matutinali dono, 'in Franciam venientem certum eſt adquiſiviſſe.' *Greg. Turon. lib.* 9. *c.* 20. See farther *LL. Burgund. tit.* 42. *l.* 2. *LL. Alaman. tit.* 56. *LL. Ripuar. tit.* 37. *l.* 2. *LL. Longobard. lib.* 1. *tit.* 9. *l.* 12. &c.

A learned and ingenious writer has obſerved, that, in England, there are no traces of the *morgengabe*. *Obſervations on the Statutes, p.* 9. 3*d edit.* This I ſuſpect is a miſtake. The *morgengabe* is mentioned in the laws of Canute, and in thoſe of Henry I. *LL. Canut. par.* 2. *c.* 71. *LL. Hen.* I. *c.* 70. *ap. Wilkins, p.* 144. 267. The pin-money of modern times, it is probable, grew out of this uſage.

A peculiar kind of matrimonial engagement was called *matrimonium ad morganaticam*, which is to be diſtinguiſhed from the rite I now mention. This form of marriage did not permit of

of *dower*, and the wife had only a morgengabe or preſent. It was intended for the benefit of men of rank, who had loſt their wives, but had children. In conſequence of it, they could legally connect themſelves with low women, who, receiving and being entitled to no dower, could not burden their eſtates. The iſſue of ſuch connections had no power of ſucceſſion, and inherited no dignity. But proviſions might be made for them. It was out of this ſource, chiefly, that the church of old was ſupplied. Men of influence could there depoſit, moſt ſecurely, the ſpawn of their concubinage. And it ſtill is, and ever will be, wherever it is wealthy, an aſylum for this produce, and for the younger ſons of noble families.

This ſcheme of legal concubinage is prevalent, at this hour, in Germany; and women, married after this odd faſhion, are termed left-handed wives; becauſe it is a part of the ceremony for the bridegroom to give his left hand to the bride. Of ſuch connections, as in antient times, the iſſue are baſtards, as to inheritance, and bear neither the name nor the arms of the father. *Baron von Lowhen on Nobility.*

Beſide the *morgengabe*, or the preſent by the huſband, it was common, at marriages, for the relations, and other perſons connected with the parties, to expreſs their ſatisfaction by making *gifts*. 'Gaudent *muneribus*,' is a part of the characteriſtic deſcription of the antient Germans by *Tacitus*. 'Franci vero,' ſays *Gregory*

of

*of Tours*, when ſpeaking of the marriage of the daughter of Chilperic, ‘ multa munera obtulerunt; alii aurum, alii argentum, ‘ nonnulli equos, plerique veſtimenta, et unuſquiſque ut potuit, ‘ *donativum* dedit.’ *Hiſt. lib.* 6. *c.* 45.

This cuſtom pervaded all ranks of ſociety. And the *money* or *penny* weddings which ſtill prevail in ſmall villages and hamlets are a remain of it. What, in one age, diſgraces not the palace of the prince, is to be confined in another to the hovel of the ruſtic.

(8) The powers over a *morgengabe*, mentioned in the text, would not probably ariſe all at once, but gradually. The two former, I imagine, would be long known before the latter; and extenſive powers over a morgengabe, conſiſting of money, would ſooner be exerted, than over one conſiſting of land. Of a morgengabe in land, there is the following diſpoſition or bequeſt by Gertrude, a German lady of high rank, in the year 1273.

‘ Allodium ſitum in Griezzenpach, ad ſe donationis titulo per- ‘ tinens, quod *morgengab* vulgariter nuncupatur, cultum et in- ‘ cultum, quaeſitum et inquiſitum, cum omnibus attinentiis ec- ‘ cleſiae S. Petri in monte liberaliter et abſolute ordinat, teſtatur, ‘ tradit, et legat.’ *Boekmer de Secund. Nupt. illuſtr. Perſ. c.* 2. § 41. *ap. Heinnec. Elm. Jur. Germ. p.* 121.

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The clergy, by beſieging the beds of the dying, procured many legacies of this kind; and their rapacity, though ſhocking and abominable, contributed to haſten the powers of the alienation of property.

(9) 'Habeat ipſa mulier morgengab, et *quod de parentibus* 'ejus adduxerit, id eſt, PHADERFIUM.' *LL. Longobard. lib.* 2. *tit.* 1. *l.* 4. See alſo *LL. Alaman. tit.* 56. *LL. Wiſigoth. lib.* 3. *tit.* 1. *l.* 5. *LL. Longobard. lib.* 1. *tit.* 9. *l.* 12.

In England, and in other countries, the term *Phaderfium*, which ſignifies *paternal eſtate*, was unknown; but the term *maritagium* implied in them the prevalence of the cuſtom. 'MA-'RITAGIUM dicitur id quod viro datur cum uxore; *dotem* enim 'appellamus Angli, non quod vir accipit, ſed quod femina.' *Spelm. Gloſſ. p.* 405. In the *Formulare Anglicanum*, there are preſerved antient feofments of land to the huſbands of the daughters and ſiſters of the grantors, in which *maritagium* is the term employed as expreſſive of the eſtate of the woman. See *Appendix* No. 2.

The following law of the Langobards, on the ſubject of the portion, or eſtate of the woman, ſeems to be very curious. 'Vidua 'quae in domo patris aut fratris regreſſa eſt, habeat ſibi morgan-'gab et methium: De *faderfio* autem, id eſt, de alio dono, 'quan-

'quantum pater aut frater dederit ei, quando ad maritum 'ambulaverit, mittat IN CONFUSUM cum aliis fororibus.' *LL. Longob. lib.* 2. *tit.* 14. *l.* 15.

This commixtion of the portions of the women, is treated by *Littleton*, in his tenures, *lib.* 3. *ch.* 2. But nothing of the hiſtory, or the philoſophy of the cuſtom, appears there. A woman who had been married, and had received her *faderſium*, might, on the death of her anceſtor, if the portions of her ſiſters were to prove higher, make a commixtion of the tenements, and lay claim to an equal ſhare. If they were to prove leſs, ſhe might retain her *faderſium*. This commixtion was called *Hotchpot*, from a diſh of that name. *Littleton, p.* 167. '*Hotch-* '*pot*,' ſays *Cowel*, 'is a word that cometh out of the lowe coun- 'tries, where *Hutſpot* ſignifieth fleſh cut into pretie pieces, and 'ſodden with herbs and roots.' *The Interpreter*, *Edit.* 1607. This diſh is ſtill in particular eſteem in Scotland. *Littleton*, as cited above, makes *hotchpot*, in its natural meaning, to ſignify a pudding compoſed of different ingredients.

The eſtate brought by the woman to the huſband, when a full infeudation, was called *Maritagium liberum*; when otherwiſe, it was *maritagium ſervitio obnoxium*. *Glanvil, lib.* 7. *Regiam Majeſtatem, lib.* 2. *Bracton, lib.* 2. *Fleta, lib.* 3. *Littleton, lib.* 1.

(10) The

(10) The *dos*, or *dower*, which had figured ſo much, was thus to be gradually ſwallowed up in the *jointure*; and, in this ſituation, it came to expreſs the eſtate brought to the huſband by the wife. This circumſtance is well illuſtrated by the following example in *Muratori*, an. 1203.

'Azo, Eſtenſis Marchio, in publico conventu baronum Lom-
'bardiae, warrantavit et profeſſus fuit, ſe accepiſſe in *dotem* a do-
'mina Aliz, filia quondam Rainaldi principis Antiocheni, quam
'in matrimonio ſibi receperit, duo millia marcharum argenti, ac
'inde jure pignoris et donationis propter nuptias, inveſtiviſſe do-
'minam Aliz de tantis de ſuis bonis et poſſeſſionibus et immo-
'bilibus, ubicumque habeat, vel adquirere debeat, ut valeant
'duplum ſupraſcriptae *dotis* et donationis.' *Antiq. Eſtenſ. tom.* 1. *p.* 381. *ap Heinnec. Elem. Jur. Germ. p.* 120.

I pretend not to fix the preciſe time when *dos* aſſumed this ſenſe. The meaning of words, varying perpetually with the fluctuation of manners and the intermixture of nations, gives an almoſt impenetrable darkneſs to the middle ages. The pale inquirer is often to forſake an interpretation he had choſen, and on which he had built. Language is to deceive him. He is to attend to cuſtoms and uſages; yet cuſtoms and uſages prevail for a time, are loſt, and ſtart up again. He is involved, and wanders in the double gloom of antiquity and barbariſm.

(11) 'Dulciſſima filia mea illa, ego ille. Diuturna ſed impia 'inter nos conſuetudo tenetur, ut de terra paterna ſorores cum 'fratribus portionem non habeant. Sed ego perpendens hanc 'impietatem, ſicut mihi a Deo aequaliter donati eſtis filii, ita 'et a me ſitis aequaliter diligendi, ut de rebus meis poſt meum 'diſceſſum aequaliter gaudeatis.' *Charta ap. Marculp. Form. lib.* 2. *c.* 12.

'Inter Burgundiones id volumus cuſtodiri, ut, ſi quis filium 'non reliquerit, in loco filii filia in patris matriſque hereditate 'ſuccedat.' *LL. Burgund. tit.* 14. *l.* 1.

'Si quis Longobardus ſine filiis legitimis maſculinis mortuus 'fuerit, et filiam dereliquerit unam aut plures legitimas, ipſae 'ei in omnem hereditatem patris vel matris ſuae, tanquam filii 'legitimi maſculini, heredes ſuccedant.' *LL. Longob. lib* 2. *tit.* 14. *l.* 19. See farther, *LL. Saxon, tit.* 7. *LL. Angl. et Werin. tit.* 6. *La Coutume Reformée du Pais et Duché de Normandie, commentée par Baſnage, tome* 1. *p.* 388. *Selecta Feudalia Thomaſiana, p.* 26—29.

(12) There are frequent examples of ladies exerciſing the civil rights and the juriſdictions of fiefs. Of courts held by them, and of decrees they pronounced, there are curious evidences in *Muratori, Antiq. Ital. Medii Ævi, vol.* 1. *p.* 489. 614. 738. 970. 971.

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In a learned work, entitled, *le Droit public de France eclairci par les monumens de l'antiquité*, we meet the following notices, which are authenticated from records.

'Mathilde Comteſſe d'Artois eut ſéance et voix deleberative 'comme les autres Pairs de France, dans le procés criminel 'fait à Robert Comte de Flandres.

'Jeanne fille de Raymond Comte de Toulouſe preta le ferment, 'et fit la foi et hommage au Roi de cette pairie.

'Jeanne fille de Bauldouin fit ferment de fidelité pour la pairie 'de Flandres. Marguerite ſa ſoeur en herita et aſſiſta comme pair 'au celebre jugement des pairs de France, donné pour le Comté 'de Clermont en Beauvoiſis.' *Bouquet*, *p.* 338. See farther *Bruſſel*, *uſage general des fiefs*, *liv.* 2. *ch* 14.

In England, in the reign of Edward III. there were ſummoned to parliament by writ *ad colloquium et tractatum* by their proxies, Mary Counteſs of Norfolk, Alienor Counteſs of Ormond, Anna Deſpenſer, Philippa Counteſs of March, Johanna Fitzwater, Agneta Counteſs of Pembroke, and Catharine Counteſs of Athol. *Gurdon's Hiſt. of the High Court of Parliament*, *vol.* 1. *p.* 202. *Parliam. Summons*, 265.

(13) The ornaments of the mother went early by ſucceſſion to the daughters; and, from the laws which prove this peculiarity, it is alſo to be inferred, that the paſſion of the women for dreſs was keen and ſtrong.

'Ornamenta et veſtimenta matronalia ad filias, abſque ullo 'fratris fratrumque conſortio, pertinebunt.' *LL. Burgund. tit.* 51. *l.* 3.

'Mater moriens filio terram, mancipia, pecuniam dimittat; 'filiae vero ſpolia colli, id eſt, murenas, nuſcas, monilia, inau- 'res, veſtes, armillas, vel quidquid ornamenti proprii videbatur 'habuiſſe.' *LL. Angl. et Werin. tit.* 6. *l.* 6.

(14) 'Si quis *propter libidinem* liberae manum injecerit, aut virgini ſeu uxori alterius, quod Bajuvarii horgrift vocant, cum vi. ſolid. componat.' *LL. Baivvar. tit.* 7. *l.* 3.

'Si indumenta ſuper *genucula* elevaverit quod humilzorun 'vocant, cum xii. ſolid. componat.' *Ibid. l.* 4.

'Si autem *diſcriminalia* ejecerit de capite, Wultworf dicunt, 'vel virgini *libidinoſe* crines de capite extraxerit, cum xii. ſol. 'componat.' *Ibid. l.* 5.

'Si

'Si qua libera faemina virgo vadit in itinere ſuo inter duas 'villas, et obviavit eam aliquis, et per raptum *denudat* caput e-'jus, cum vi. ſol. componat. Et ſi ejus veſtimenta levaverit, ut 'uſque ad *genicula* denudet, cum vi. ſol. componat: Et ſi eam 'denudaverit ut *genitalia* ejus appareant, vel *poſteriora*, cum xii. 'ſol. componat.' *LL. Alaman. tit.* 58. *l.* 1.

'Si quis liberam foeminam per *verenda* ejus comprehende-'rit iiii. ſolid. componat, et duos ſolidos pro freda.' *LL. Friſion. tit.* 22. *l.* 89. See farther *LL. Sal. tit.* 22. *LL. Longobard. lib.* 2. *tit.* 55. *l.* 16.

One muſt ſmile at the ſimplicity of theſe regulations. They are proofs, notwithſtanding, of the reſpect entertained for chaſtity. They expreſs, immodeſtly, the delicacies of a rude, but refining people. They offend virtue, in the very act of promoting it.

Similar inſtitutions or regulations, may be ſeen in the code of Gentoo laws; but, as they are expreſſed with a ſtill greater freedom of language, I avoid to give any examples of them. *Ch.* 19.

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## SECTION III.

(1) 'PRINCIPES regionum atque pagorum inter ſuos jus 'dicunt, controverſiaſque minuunt.' *Caeſar, de Bell. Gall. lib.* 6. *c.* 22. See alſo *Tacit. de Mor. Germ. c.* 12.

Theſe *principes* became lords or barons, after the conqueſts of the barbarians, and, in this laſt ſtate, continued and improved the privileges they had previouſly poſſeſſed. *Diſſert. concerning the Antiquity of the Engliſh Conſtitution, Part.* 3. In Germany, there was probably no appeal from their deciſions. For, in the German communities, it is ſaid, there was no common magiſtrate. 'Nullus communis eſt magiſtratus.' *Caeſar, ibid.* The judging, without appeal, was exerciſed in all the Gothic kingdoms by the higher diviſion of the nobility. They had the *high* and the *low* juſtice, the *juſtice haut et bas, alté et baſſé.*

It would lead to details improper in this place, if I ſhould attempt to explain the origin and growth of the different privileges

leges of the nobles. But I may hint my ſurpriſe, that theſe topics, ſo full of curioſity, have ſo little attracted our antiquaries and lawyers. The juriſdiction and powers exerciſed by the great, form a remarkable ſtep in the progreſs of the European governments. Loyſeau, indeed, and many French writers, make an eaſy diſcuſſion of this matter, by affecting to treat them as encroachments on monarchy, or on the rights of kings. And Dr Robertſon has given his ſanction to this opinion. *Hiſt. of Charles* V. *vol.* 1. *p.* 60.

A perfection, however, of government, or of regal juriſdiction, is thus ſuppoſed, in the moment of its riſe; a circumſtance, contradictory alike to natural reaſon and to ſtory. Government is not perfect all at once: It attains not maturity but by ſlow degrees. The privileges of the nobles were prior to its perfect ſtate. In fact, it was by the abolition of theſe that it grew to ſtrength and ripeneſs. The monarchies of Europe were completed, when the high privileges of the nobility were deſtroyed. But theſe privileges were exerciſed before government was underſtood, and before kings had aſcertained their prerogatives.

(2) An old writer, ſpeaking of the greater barons or lords, has theſe words. 'In omnibus tenementis ſuis omnem *ab anti-* '*quo* legalem habuere juſtitiam, videlicet, ferrum, *foſſam*, *furcas*, 'et ſimilia.' *Gervaſius Dorobern. an.* 1195. *ap. Du Cange, voc. Foſſa.*

'Prod.tores

'Proditores et transfugas,' ſays *Tacitus* of the old Germans, '*arboribus ſuſpendunt*. Ignavos et imbelles, et corpore infames '*coeno ac palude*, injecta inſuper crate, *mergunt*.' *De Mor. Germ. c.* 12. This deſcription has, doubtleſs, a reference to the German nobles or chiefs who preſided in the courts of the cantons and diſtricts into which a tribe or community was divided. And, does it not call to one's mind the *pit* and *gallows*, or the right to determine *de alto et baſſo* of the feudal nobility?

The power of mercy, or the pardoning of a criminal after ſentence has been pronounced againſt him, is a curious circumſtance in criminal juriſdiction. I ſhould think, that it was exerted by the lord or baron in his dominions before it could be exerciſed in a general manner by the ſovereign. The connection between the lord and the vaſſal was intimate; and the felony of the latter being chiefly an injury to the former, it might naturally enough be imagined, that he was entitled not only to forgive the offence, but to ſuſpend the puniſhment. To his proper vaſſals, the ſovereign might alſo act in the ſame way. It was thus, in fact, in the Anglo-Saxon period of our hiſtory. For the king had then only the power of pardoning crimes as to himſelf. But, on what principle did the ſovereign begin to exert the general prerogative of pardoning criminals, every where through the ſtate, after condemnation? The queſtion is important, and might be argued with great ſhow, and much ingenuity. But the narrow boundaries within which I muſt confine

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my remarks, admit not of either. I can only hint at my idea, and muſt not wait to inſiſt upon it.

When the territorial juriſdictions of the nobles were to decay, they loſt the privilege of giving pardons, as well as the other advantages annexed to their fiefs. The judges who ſucceeded them, were not to poſſeſs their prerogatives. Other, and more cultivated maxims of law and equity, had grown familiar. Unconnected with the diſtributions and the offices of juſtice, but as peers, the nobles were to ceaſe to interfere with law and buſineſs in their eſtates or territories. In this condition, their prerogatives could paſs no where but to the crown. That of *mercy* was to be ſwallowed up with the reſt.' When regular courts were erected, and when the barons neither levied troops, coined money, nor pardoned crimes, all theſe privileges were to be exerciſed, excluſively, by the ſovereign. All the members of the community were then under one head. The kingdom ſeemed as it were to be one great fief, and the people looked up to the ſovereign as the only ſuperior.

The act of parliament which had the effect to abridge, for ever, the high prerogatives of the nobles, declares, 'That no perſon 'or perſons, of what eſtate or degree ſoever they be, from the 'firſt day of July, which ſhall be in the year of our Lord God '1536, ſhall have any power or authority to pardon or remit 'any treaſons, murthers, manſlaughters, or any kind of felonies,

'whatſoever they be; nor any acceſſaries to any treaſons, mur-
'thers, manſlaughters, or felonies; or any outlawries, for any
'ſuch offences committed, perpetrated, done, or divulged, or
'hereafter to be committed, done, or divulged, by, or againſt
'any perſon or perſons, in any part of this realm, Wales, or to
'the marches of the ſame; but that the King's Highneſs, his
'heirs and ſucceſſors, Kings of this realm, ſhall have *the whole*
'*power and authority thereof*, united and knit to the imperial
'crown of this realm.' *Stat.* 27. *Henry* VIII. *c.* 24.

(3) Du Cange, Diſſert. 29. ſur l'Hiſtoire de St. Louis. Bruſſel, uſage general des fiefs, liv. 2.

(4) 'Suſcipere tam inimicitias ſeu patris ſeu propinqui, quam
'amicitias, neceſſe eſt.' *Tacit. de Mor. Germ. c.* 21.

Hence the *deadly feuds* of our anceſtors. Such is the ſtate of manners in all rude ages. The American carries his friendſhips and his reſentments to extremity, and delivers them as an inheritance to his ſons. He is the beſt friend, and the bittereſt enemy. When he is diſpoſed to be hoſtile, he knows how to conceal his ſentiments: 'He can even affect to be reconciled till he
'catches the opportunity of revenge. No diſtance of place, and
'no length of time can allay his reſentment, or protect the object
'of it.' *Europ. Settlem. in Amer. vol.* 1. *p.* 165.

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It was in conſequence of the principle or right of revenge, that the Greeks made it a maxim of their creed, that the gods puniſh the crimes of the wicked upon their innocent poſterity. It was a conſequence of it, that, even in modern times, thoſe inclement and ungenerous laws were enacted, which taint the blood of a rebel, which dare to violate the ſacred rights of humanity, and to puniſh a blameleſs progeny with penalties and forfeitures.

(5) 'In Gallia, non ſolum in omnibus civitatibus, atque pagis 'partibuſque, ſed pene etiam in ſingulis domibus, *factiones* ſunt; 'earumque factionum ſunt *principes*, qui ſummam auctoritatem 'eorum judicio habere exiſtimantur; quorum ad arbitrium ju-'diciumque ſumma omnium rerum conſiliorumque redeat.' *Caeſar, de Bell. Gall. lib.* 6. *c.* 10.

After the Germanic conqueſts, the words *faida*, *feid*, *feeth*, and *feud*, came to expreſs the hoſtilities of the combination of kindred, who revenged the death of any perſon of their blood, againſt the killer and his race. In the Anglo-Saxon period of our hiſtory, theſe factions and hoſtilities were prevalent to an uncommon degree. And, what is worthy of obſervation, when a perſon was outlawed, and could form no combination of this ſort for his protection, but might be put to death by any individual who met him, the term *freendles-man*, expreſſed his condition. 'Talem,' ſays *Bracton*, 'vocant Anglici *Utlaughe*, et a-

'lio nomine *antiquitus* ſolet nominari, ſcilicet FRENDLES-'MAN.' *Lib.* 3. *p.* 129.

About the year 944, King Edmund, with a view of repreſſing the violence and pernicious tendency of ſuch confederacies, enacted the following method for their regulation.

'Memet, et nos omnes taedet impiarum et quotidianarum 'pugnarum quae inter nos ipſos fiunt, et propterea in hunc mo-'dum ſtatuimus. Si quis alium poſthac interfecerit, ſolus cum 'interfecti cognatis faidam gerito, cujuſcunque conditionis fue-'rit, ni ope amicorum integram weram intra 12 menſes perſol-'verit. Sin deſtituerint eum cognati et noluerint: Volumus ut 'illi omnes [praeter reum] à faida ſint liberi, dum tamen, nec 'victum ei prebeant, nec refugium. Quod ſi quis hoc fecerit 'ſuis omnibus apud regem mulctator, et cum eo quem deſti-'tuit nuper, faidam jam ſuſtineat propinquorum interfecti. Qui 'vero ab alio cognatorum quam a reo ſumpſerit vindictam, ſit 'in faida ipſius regis et amicorum ſuorum omnium, omnibuſ-'que bonis ſuis plectitor.' *LL. Edmund. ap. Spelm. Gloſſ. p.* 209.

The method of compounding, or of buying away the reſent-ment of the injured kindred, is thus deſcribed by the ſame prince.

'Prudentium.

'Prudentium eſt faidas compeſcere. Primo [de more genti-
'um] oratorem mittet interfector ad cognatos interfecti, nuncia-
'turum ſe velle eiſdem ſatisfacere. Deinde tradatur interfec-
'tor in manus oratoris, ut coram veniat pacaté, et de ſolvenda
'wera ipſemet ſpondeat. Sponſam ſolvi ſatiſdato. Hoc facto,
'indictetur mundium regis, ab illo die uſque in 21 noctes, et
'colliſtrigii mulctam dependito; poſt alias 21 noctes manbotam,
'et nocte 21 ſequenti primam were ſolutionem numerato.'
*LL. Edmund. ap. Spelm. Gloſſ. p.* 210. *et Wilkins, p.* 74. 75.

Tranſactions of the ſame nature, characteriſe the criminal juriſprudence of all infant nations. 'Criminal matters,' ſays a moſt acute and elegant writer, 'are generally compromiſed a-
'mong the Americans in the following manner. The offender
'abſents himſelf; his friends ſend a compliment of condolence
'to thoſe of the party murdered. Preſents are offered, which
'are rarely refuſed. The head of the family appears, who, in a
'formal ſpeech, delivers the preſents, which conſiſt often of a-
'bove ſixty articles, every one of which is given to cancel ſome
'part of the offence, and to aſſuage the grief of the ſuffering
'party. With the firſt he ſays, *By this I remove the hatchet*
'*from the wound, and make it to fall out of the hands of him*
'*who is prepared to revenge the injury;* with the ſecond, *I dry*
'*up the blood of that wound;* and ſo on, in apt figures, taking
'away, one by one, all the ill conſequences of the murder.'
*Europ. Settlem. in America, vol.* 1. *p.* 174.

The

The hoſtilities and factions of which I ſpeak, were ſupported among the Anglo-Saxons, as among the Gauls and the Germans, by the authority and countenance of the chiefs and the nobles. In the Norman times, the barons gave letters or mandates of protection to individuals, whom they were diſpoſed to ſerve. Even kings gave obligations to abbeys and monaſteries, by which they were bound to protect them againſt violence of every kind. On the conſideration of fines, they were even to remit their own animoſities, and to protect criminals from juſtice. See *Appendix*, No 3. The ſame things had place in the other kingdoms of Europe. Men, weak, and without ſtrength, bought the aſſiſtance and protection of the ſtrong and powerful. *Du Cange, voc. Salvamentum, Capitalicium. Form. Solen. ap. Baluz.*

(6) After the beautiful diſcovery of a magiſtrate, the violence of the injured is corrected; and it is then, probably, that fines and compenſations for offences are invented, or at leaſt eſtabliſhed. 'Nec implacabiles durant,' ſays *Tacitus*, of the reſentments of the Germans, 'luitur enim etiam homicidium certo armento-'rum ac pecorum numero, recipitque ſatisfactionem univerſa 'domus.' *De Mor. Germ. c.* 31.

Theſe fines or compoſitions, of which it was the object to ſatisfy the revenge of the relations of the perſon who had ſuffered, were originally ſettled by their agreement with the offender,

or,

or, by the diſcretion of the magiſtrate. Afterwards they were fixed by ordinances. The Anglo-Saxon laws, as well as thoſe of the other barbarians, recount not only the ſtated fines for particular offences, but for particular perſons, from the prince to the peaſant. When the delinquent could not pay the fine, which was to buy away, or to gratify the reſentment of the injured family, the law, before it was improved, delivered him over to their reſentment, and the wild ſtate of nature revived again. Compoſitions of this kind were known, antiently, in Europe, under a variety of names. See in the Gloſſaries, *Wera*, *Faida*, *Compoſitio*, *Wergeldum*, &c.

The exaction of fines to the injured, among the antient Germans, I conſider as a proof that, in criminal matters, they had proceeded to appeal to a judge. I therefore differ from Dr Robertſon, when he obſerves, that, 'among the antient Germans, 'as well as other nations in a ſimilar ſtate of ſociety, the right 'of avenging injuries was a private and perſonal right, exerci-'ſed by force of arms, without any reference to an umpire, or 'any appeal to a magiſtrate for deciſion.' *Hiſt. of Charles V. vol.* 1. *p.* 274.

'In fact, it was not even ſolely the fine to individuals that was known among the Germans. They had advanced much farther in criminal juriſprudence. It was thought that the criminal, beſide offending a particular family by the injury done to any

of

of its number, had alſo offended the ſociety, by breaking its peace. A fine, likewiſe, was, on this account, exacted from him, and went to the public or fiſc. And thus Mr Hume, too, is miſtaken, when he will not allow that the Germans had made this ſtep towards a more cultivated life. *Hiſt. of England, vol.* 1. *p.* 154.

Theſe different fines, the compoſition to the individuals, and that to the public, are pointedly and beautifully diſtinguiſhed in the following paſſage of *Tacitus.* Having mentioned the methods in which the German nations puniſhed the greater crimes, he adds, 'Levioribus delictis, pro modo poenarum, equorum 'pecorumque numero convicti mulctantur. Pars mulctae *Regi* 'vel *Civitati*: Pars *ipſi* qui vindicatur, vel *propinquis* ejus, ex-'ſolvitur.' *De Mor. Germ. c.* 12. It is impoſſible for an authority to be more expreſs or ſatisfactory againſt theſe eminent writers.

After the conqueſts of the Germans, the fine for diſturbing the public peace was exacted under the name of *fredum;* and, it is obſervable, that a portion of the profits of it came to conſtitute the firſt ſalary of judges.

The biographer of Charles V. I am ſenſible, profeſſing to be guided by Baron Monteſquieu, denies that 'the *fredum* was a 'compenſation due to the community, on account of the public 'peace;' and conſiders it as 'the price paid to the magiſtrate 'for

'for the protection he afforded againſt the violence of reſent-
'ment.' *Vol.* 1. *p.* 300. This notion ſeems not to agree with his former opinion, as he conceives that the *fredum* was paid in the age of *Tacitus* *. And I obſerve he has alſo affirmed, that the fine to the injured family may, in like manner, be traced back to the antient Germans †, which appears to be another inconſiſtency with his former declaration. But, waving any conſideration of theſe inadvertencies, I think there is nothing more evident, than that the *fredum* was originally paid to the fiſc, or to the ſovereign, for the breach of the peace. The following arguments are ſtubborn, and perhaps concluſive.

'*Fredum* regalis compoſitio PACIS.' *Gloſſ. Vet. ap. Lindenbrog.* *p.* 1404.

'Hoc quoque jubemus, ut judices ſupra nominati, ſive fiſca-
'les, de quacunque libet cauſa freda non exigant, priuſquam fa-
'cinus componatur. Si quis autem per cupiditatem iſta tranſ-
'greſſus fuerit, legibus componatur. Fredum autem non illi ju-

 'dici

* 'A certain ſum, called a *fredum*, was paid to the king or ſtate, as Tacitus ex-
'preſſes it, or the Fiſcus, in the language of the barbarous laws.' *vol.* 1. p. 300.

† 'The payment of a fine, by way of ſatisfaction to the perſon or family injured,
'was the firſt device of a rude people, in order to check the career of private re-
'ſentment, and to extinguiſh thoſe *faidae* or deadly feuds, which were proſecuted a-
'mong them, with the utmoſt violence. This cuſtom may be traced back to the
'antient Germans.' *vol.* 1. *p.* 299

'dici tribuat, cui culpam commiſit, ſed illi qui ſolutionem recipit, 'tertiam partem FISCO tribuat, ut PAX perpetua ſtabilis perma-'neat.' *LL. Ripuar. tit.* 89.

'Si quis liber liberum infra januas eccleſiae occiderit, cognoſcat 'ſe contra Deum injuſte feciſſe, et eccleſiam Dei polluiſſe: Ad ip-'ſam eccleſiam quam polluit lx. ſol. componat. Ad FISCUM vero 'ſimiliter alios lx. ſol. pro FREDO ſolvat: Parentibus autem legi-'timum weregildum ſolvat.' *LL. Alaman. tit.* 4.

'Si nobilis furtum quodlibet dicitur perpetraſſe, et negare vo-'luerit, cum quinque ſacramentalibus juret: Aut ſi negare non 'potuerit, quod abſtulit in duplum reſtituat, et ad partem REGIS 'lxxx. ſol. pro FREDO componat, hoc eſt Weregildum ſuum.' *LL. Friſionum, tit.* 3. *l.* 1. See farther *LL. Longobard. tit.* 30. *l.* 13. *Capit. Kar. et Lud. lib.* 3. *tit.* 30.

Among the Anglo-Saxons, the fine for the violated peace was termed *Griethbrech. Spelm. Gloſſ.* It was, as times became mercenary, that a part of the *fredum*, and ſometimes the whole of it, went to the judge. And the ſalary thus aſſigned to him, was not for the protection he afforded, for he was the ſervant of the public; but as the reward of his growing trouble, and the emolument of his office. See *LL. Sal. tit.* 52. *l.* 3. *tit.* 55. *l.* 2. *LL. Baivvar. tit.* 2. *l.* 16.

The

The giving a ſtipend to judges out of the fines for the violated peace, was common in England, as well as in the other ſtates of Europe. This ſtipend or allowance was uſually the *third penny* of the county. An old book of Battel-Abbey, cited by *Mr Selden*, has theſe words. 'Conſuetudinaliter per totam Angliam mos 'antiquitus pro lege inoleverat, *comites* provinciarum TERTIUM DENARIUM ſibi obtinere.' *Tit. Hon. part* 2. *ch.* 5. *ſect.* 7. Gervaſe of Tilbury, or whoever wrote the old dialogue concerning the exchequer, ſpeaks thus. 'Comes eſt 'qui TERTIAM PORTIONEM eorum quae de placitis proveni-'unt in quolibet comitatu percipit.' And the *Earl*, he ſays, was called *Comes*, 'quia *Fiſco* ſocius eſt, et comes in percipiendis.' *Dial. de Scaccar. lib.* 1. *c.* 17. This tract is publiſhed by Mr Madox in his hiſtory of the exchequer. 'De iſtis octo libris,' ſay the laws of the Confeſſor, '[ſcil. mulcta violatae pacis] *Rex* 'habebat centum ſolidos, et *Conſul* comitatus quinquaginta, qui 'TERTIUM habebat DENARIUM de forisfacturis: Decanus 'autem reliquos decem.' *LL. Conſeſſ. c.* 31. *ap. Spelm. Gloſſ. p.* 142. What ſhows likewiſe, beyond a doubt, that the third penny of the county aroſe out of the fines for the violated peace, is the circumſtance, that the *Kings* of England made formal grants of it to ſubjects whom they favoured. This, the book already quoted concerning the exchequer, lays down in theſe words. 'Hii (it had been ſpeaking of Earls, and of the profits of fines,) 'tantum iſta percipiunt, quibus *regum* munificentia obſequii 'praeſtiti, vel eximiae probitatis intuitu comites ſibi creat, et

'ratione dignitatis illius haec conferenda decernit, quibuſdam *hae-*
'*reditarie* quibuſdam *perſonaliter*.' *Dial. de Scaccar. ap. Madox*, *p.* 402. The higher Earls, or the Earls palatine, it is obſervable, had all the profits to their own uſe. Of the Earls who poſſeſſed the *third penny*, there is mentioned the Earl of Kent, who had it under William I. And there is evidence, that it was antiently enjoyed by the Earls of Arundel, Oxford, Eſſex, Norfolk, and Devonſhire. *Selden, Tit. Hon. part* 2. *ch.* 5. *Madox, Baron. Anglica, book* 2. *ch.* 1.

(7) When the right of private war was acknowledged as a legal prerogative of nobility, regulations were made to adjuſt its nature and exertion. *Beaumanoir, Coutumes des Beauvoiſis, ch.* 59. *Du Cange, diſſert.* 29. *ſur l'hiſtoire de St. Louis. Boulainvilliers on the antient parliaments of France, letter.* 5. What is ſurpriſing, even the neglect of exerciſing this right, when a proper occaſion required its exertion, was an offence to the order who profeſſed it, and an object of puniſhment. 'La Duc San-
'dragèſile,' ſays *Saint Foix*, 'ayant été tuè par quelqu'un de
'ſes ennemis, les Grands du Royaume citerent ſes enfans qui
'negligeoient de venger ſa mort, et les priverent de ſa ſucceſſion.' *Eſſais hiſtor. tom.* 2. *p.* 88. In France, this prerogative of the nobles was not entirely aboliſhed in the middle of the fourteenth century. *Bruſſel, uſage general des Fiefs, liv.* 2. *ch.* 2.

Dr

Dr Robertſon ſeems to imagine, that, in England after the Norman invaſion, the nobility loſt, or did not exerciſe the right of private war; and he reaſons with a view to account for theſe particulars. *Hiſt. of Charles* V. *vol.* 1. * It is to be acknowledged, that the hiſtorians of England have not been ſufficiently attentive

* 'After the conqueſt, the mention of private wars among the nobility, occurs 'more rarely in the Engliſh hiſtory, than in that of any other European nation, and 'no laws concerning them are to be found in the body of their ſtatutes. Such 'a change in their own manners, and ſuch a variation from thoſe of their neigh-'bours, is remarkable. Is it to be aſcribed to the extraordinary power which 'William the Norman acquired by right of conqueſt, and tranſmitted to his ſuc-'ceſſors, which rendered the execution of juſtice more vigorous and deciſive, and 'the juriſdiction of the King's court more extenſive, than under the monarchs on 'the continent? Or, was it owing to the ſettlement of the Normans in England, 'who, having never adopted the practice of private war in their own country, a-'boliſhed it in the kingdom which they conquered? It is aſſerted, in an ordinance 'of John King of France, that in all times paſt, perſons of every rank in Nor-'mandy have been prohibited to wage war, and the practice has been deemed un-'lawful. *Ordon, tom.* 2. *p.* 407. If this fact were certain, it would go far towards 'explaining the peculiarity which I have mentioned. But, as there are ſome En-'gliſh acts of parliament, which, according to the remark of the learned author 'of the *obſervations on the ſtatutes, chiefly the more antient*, recite falſehoods, it 'may be added, that this is not peculiar to the laws of that country. Notwith-'ſtanding the poſitive aſſertion in this public law of France, there is good reaſon 'for conſidering it as a ſtatute which recites a falſehood.' *Charles* V. *vol.* 1. *p.* 286. 287.

The firſt queſtion that is put by this hiſtorian, is founded on a miſtake; for William the Norman atchieved no *conqueſt* over England. The ſecond queſtion is founded on a ſuppoſed fact, which he appears to regard as of no moment; and indeed it does not deſerve to be conſidered in any other light.

attentive to record the private wars of the nobles. But this elegant writer ought, doubtleſs, to have remembered, that, in the higher order of its nobility, the right of private war was as much inherent as the coinage of money, the holding of courts, or any other of their prerogatives; and that theſe received not their laſt and effectual blow till the age and reign of Henry VIII.

In the appendix, I produce a very curious proof of the exerciſe of private war in England. It is a truce between two nobles, agreeing to ſtop hoſtilities. *Appendix*, No. 4. The following paſſage of *Glanville*, is alſo a ſtriking teſtimony of the exiſtence of the right of private war. 'Utrum vero ad *guerram* '*ſuam* maintenendam poſſint domini hujuſmodi auxilia exigere 'quaero.' *lib.* 9. *c.* 8. And the diſpute between Richard, Earl Marſhal, and Henry III. of which there is a ſingular relation in Matthew Paris, is certainly to be accounted for on the principle of this prerogative.

Nor is there wanting other evidence of its exiſtence. It was in a great meaſure, from the exerciſe of the right of private war, that in England, in the age of Stephen, there were above eleven hundred forts and caſtles. *Lord Lyttelton's Hiſtory of Henry* II. *vol.* 1. *p.* 418. The *feudum jurabile* et *reddibile* was likewiſe a conſequence of it, by which a ſovereign or a noble put a vaſſal into any of his caſtles, in order to defend it, and to guard his ſtores and his priſoners, and whom he bound by an oath, to reſtore

ſtore it in a certain time, or to his call or mandate. This form of fief and tenure was not only known in England, but frequent there; and mention is made of it in the laws of Henry I. The right of private war was, therefore, often exerciſed in this country; and, what deſerves obſervation, without paying an attention to this right, it is impoſſible to explain thoſe ordinances of Henry which allude to this feudal peculiarity. Spelman, not attending to it, could not reach their meaning, and pronounces of them, that they are obſcure and corrupted. *Gloſſ. voc. Caſtellacium.* Their ſenſe, notwithſtanding, when tried by this ſtandard, is eaſy and natural.

(8) The prerogatives of the higher nobility throughout Europe, may be referred to the following heads; the power of making war of their private authority, the right of life and death in their territories, the levying of impoſts, the raiſing of troops, the coining of money, and the making of laws. It is to be wiſhed, that ſome inquiſitive and judicious antiquary would collect from the Engliſh laws and records, all the circumſtances to be found which have a relation to theſe topics. He could not offer a more valuable preſent to the public.

Theſe powers were exerciſed by the higher nobles among the Anglo-Saxons. For, though *palatinates*, which are generally allowed to have poſſeſſed them, were not familiar by name in thoſe times; yet, I cannot but agree with Mr Selden, that the ſenſe

ſenſe and ſubſtance of them were then fully known. The Anglo-Saxon earls, who had their earldoms to their own uſe, had regal juriſdiction, and the king's writ of ordinary juſtice did not run in their dominions. Such, for example, was Etheldred Earl of Mercland, under King Alfred, and his ſon King Edward. *Selden, Tit. Hon. part.* 2. *ch.* 5. *ſect.* 8. *Diſſert. concerning the Antiq. of the Engl. Conſtitution, part* 3.

After the Norman invaſion, many of the higher nobility were expreſsly known as *Earls-Palatine.* Cheſhire was a palatinate, and poſſeſſed by its earls, *ad gladium, ſicut ipſe rex totam tenebat Angliam ad coronam ſuam.* The antient Earls of Pembroke were alſo palatines, being *domini totius comitatus de Pembroch,* and holding *totum regale infra praecinctum comitatus ſui de Pembroch.* This is the language of records. The like *regality* was claimed in the barony of Haverford. The biſhops of Durham had, antiently, *omnia jura regalia, et omnes libertates regales infra libertatem ſuam Dunelmenſem.* The archbiſhop of York had a regality in Hexham, which, antiently, was ſtyled a *county-palatine.* The biſhoprick of Ely was a palatinate, or a royal franchiſe. The earldom of Lancaſter was created *palatine* in the reign of Edward III. Hugo de Beleſme Earl of Shrewſbury, under William II. had the title *palatine.* The ſame thing is mentioned of John Earl of Warren and Surrey, under Edward III. And Humfrey de Bohun, Earl of Hereford and Eſſex, had a *regality* within the honour of Breknou. *Spelman Gloſſ.*

*de*

*de Comite Palatino, Selden, tit. Hon. part.* 2. *ch.* 5. *ſect.* 8. *Madox, Bar. Angl. p.* 150. *Camden, Britan. p.* 661. 935.

(9) *Marculphus* has preſerved a form or writing by which the converſion of allodiality into tenure took place. The inquiſitive reader may conſult it in *Baluz. Capit. Reg. Franc. tom.* 2. *p.* 382. 383. with the notes of *Hieron. Bignon. p.* 896. 898.

The agreement of an allodial proprietor and the ſovereign, or the feudal lord to whom he was diſpoſed to grant his property, with the view of ſubmitting it to tenure, directed the nature and peculiarity of the obligations to which he was to yield in his new ſituation. In conſequence of the protection of a ſuperior, he was generally to give his military ſervice, and all the aids or incidents of fiefs. At other times, however, he was only bound not to take arms againſt the ſuperior, but to remain at peace, without any connection with the enemies of his lord, and without the burden of the feudal incidents. He was ſimply to be bound to homage, and a paſſive fidelity.

It is contended for, indeed, ſtrenuouſly, and at great length, by Monſr. Bouquet, that the greater and leſſer juriſdictions were inherent in allodiality. *Le droit Public de France.* Dr Smith, in his moſt ingenious Inquiries concerning the Wealth of Nations, gives his ſuffrage for the ſame opinion. And Dr Ro-

bertſon, notwithſtanding what he has ſaid concerning fiefs, is, in ſome meaſure, diſpoſed to it. *Hiſt. of Charles* V. *vol.* 1. *p.* 303.

If ſupreme juriſdiction, however, and eminent prerogatives were connected with allodiality, it ſeems altogether inconceivable, why its poſſeſſors ſhould have converted it into fiefs. Perhaps theſe writers have confounded with allodiality the *feudum Francum*, or *honoratum*, which expreſſed a condition of it after its converſion into feudality. 'Ut omnia teneant,' ſays an old monument cited in Du Cange, 'ab Abbate et ſucceſſoribus in '*francum feodum* ſive *allodium*, ut pro his homagium francum 'nobis Abbati et ſucceſſoribus noſtris, amplius facere teneantur.' 'Haec omnia,' ſays another charter cited by him, 'habeo et 'teneo a te D. Raymundo Comite Melgorii ad *feodum francum* 'et *honoratum*, pro quibus omnibus preſcriptis facio vobis homi-'nium et fidelitatem.' *Du Cange*, *voc. Feudum francum et honoratum.* 'Les fiefs *d'honneur*,' ſays *Salvaing*, 'ſont ceux qui 'ont tellement conſervé la nature de leur origine, qu'ils ne 'doivent au ſeigneur que la *bouche* et les *mains*, ſans aucune 'charge de quint, de rachat, ni d'autre profit quelconque.' *ch.* 3.

It is alſo well known, and might be illuſtrated by a variety of proofs, that allodial proprietors were ſo little attended to, and adorned with diſtinctions, that they could not, without the conſent of the king, build, for their protection, a houſe of ſtrength or a caſtle. *Bruſſel*, *uſage-general des fiefs*, *vol.* 1. *p.* 368. Yet this

this privilege was originally of ſo little account, that it was enjoyed indifferently by every feudal lord.

(10) Du Cange, voc. Gruarium, Pedagium, Rotaticum, Feudum Nummorum, Feudum Soldatae. Bruſſel, Uſage-general des fiefs, liv. 1. ch. 1. ſect. 11. Aſſiſes de Jeruſalem, avec des notes, par Thaumaſſiere, *p.* 171. 268.

## SECTION IV.

(1) 'DUCES ex virtute ſumunt. . . . Duces exemplo 'potius quam imperio, ſi prompti, ſi conſpicui: 'Si ante aciem agant, admiratione praeſunt.' *Tacit. de Mor. Germ. c.* 7. 'Ubi quis ex principibus in concilio ſe dixit ducem 'fore, ut qui ſequi velint profiteantur; conſurgunt ii qui et cau- 'ſam et hominem probant, ſuumque auxilium pollicentur, atque 'ab multitudine collaudantur.' *Caeſar, de Bell. Gall. lib.* 6. *c.* 22.

(2) 'Nihil autem neque publicae neque privatae rei, niſi ar- 'mati agunt. Sed arma ſumere non ante cuiquam moris, quam 'civitas ſuffecturum probaverit. Tum in ipſo conſilio vel prin- 'cipum aliquis, vel pater, vel propinquus ſcuto frameaque juve- 'nem ornant.' *Tacit. de Mor. Germ. c.* 13.

'Theſe military youths,' ſays *Camden*, 'were called in their 'language *Knechts*, as they are in ours.' *Introd. to the Britannia, p.* 245.

(3)

(3) 'Patri Regi Rex Ludovicus Ingelheim occurrit, indeque 'Reneſburg cum eo abiit, ibique *enſe* jam appetens adoleſcentiae 'tempora, *accinctus eſt*.' *Vit. Lud. Pii, an.* 791. Of King Athelſtane there is this mention in *Malmsbury*, 'Nam et avus 'Alfredus proſperum ei regnum imprecatus fuerat, videns et 'gratioſe complexus ſpeciei ſpectatae puerum, et geſtuum ele-'gantium: Quem etiam premature *militem fecerat donatum* '*chlamyde coccinea, gemmato baltheo, enſe Saxonico, cum vagina* '*aurea*.' *Lib.* 2. 'Henrico nepoti ſuo David Rex Scotorum *vi-*'*rilia tradidit arma*.' *Hen. Huntingdon, lib.* 8. See *Du Cange, voc. Arma.*

Other particulars, expreſſive of the antiquity of knighthood, may be ſeen in the Diſſertations on the hiſtory of St. Louis. And, with regard to our Saxon anceſtors in particular, *Mr Selden* has found frequent mention of knights in the charters of that age. *Titles of honour, part* 2. *ch.* 5. Mr Hume, therefore, reaſons hypothetically, when he admits not of chivalry in the Anglo-Saxon times. *Appendix*, 11.

The addition *Sir* to the names of knights, was in uſe before the age of Edward I. and is from *Sire*, which in old French ſignifies *ſeignieur*, or lord. Though applicable to all knights, it ſerved properly to diſtinguiſh thoſe of the order who were not barons. To knights-baronet, who are a modern inſtitution, and no part of the antient chivalry, the addition *Sir* is granted

granted by a clauſe in their patents of creation. *Aſhmole on the Garter, ch.* 1.

The moſt honourable method of receiving knighthood was from the ſovereign. But every poſſeſſor of a fief could beſtow it; and one knight could create another. 'Eorum,' ſays *Spelman*, 'fuit militem facere quorum fuit feodum dare.' *Diſſert. de milite, ap. Reliq. p.* 180. 'Tout chevalier,' ſays *St. Palaye*, 'a-'voit le droit de faire chevaliers.' *Memoires ſur l'ancienne chevalerie, tom.* 1. *p.* 70. A king could receive it from the hands of a private gentleman.

Its value may be remarked in the following peculiarity. 'Sci-'tis,' ſaid a Lombard king to his courtiers, 'non eſſe apud nos 'conſuetudinem, *ut regis filius cum patre prandeat*, niſi prius a 'rege gentis exterae *arma ſuſceperit*.' *Paul. Diac. lib.* 1. *ap. Honoré de Sainte Marie, diſſert. ſur la chevalerie, p.* 182. 'Libe-'ros ſuos,' ſaid *Caeſar* of the Gauls, 'niſi quum adoleverint, ut 'munus militiae ſuſtinere poſſint, palam ad ſe adire non patiun-'tur; filiumque in puerili aetate in publico *in conſpectu patris* 'aſſiſtere, turpe ducunt.' *De Bell. Gall. lib.* 6. *c.* 18.

'Dans les premiers temps,' ſays *St. Palaye*, 'la plus illuſtre 'naiſſance ne donnoit aux nobles *aucun rang perſonnel*, a moins 'qu'ils n'y euſſent ajoûté *le titre* ou *le grade de chevalier*. 'Juſqu' alors on ne les conſideroit point comme *membres de* 'l'etat,

'*l'etat*, puiſqu' ils n'en etoient point encore les *ſoutiens et les* '*defenſeurs:* Les Ecuyers appartenoient à la *maiſon* du maitre 'qu' ils ſervoient en cette qualité; ceux qui ne l'etoient pas en-'core, n' appartenoient *qu' á la mere de famille* dont ils avoient 'reçu la naiſſance et la premiere education.' *Tom.* 1. *p.* 298.

*Tacitus*, having deſcribed the ceremony of inveſting the German with arms, adds, 'Haec apud illos toga, hic primus juventae 'honos, ante hoc *domus* pars videntur, mox *reipublicae.*' *De Mor. Germ. c.* 13.

This tendency and concurrence of circumſtances is ſtriking; and to theſe inſtitutions we may trace the contempt with which the rights of *minors*, both of high and low condition, were treated, in the middle ages. To be in minority was to be nothing. Before his majority, or the inveſtiture of arms, the individual did not ſeem a citizen or a ſubject.

(4) 'Virtutem proprium hominis bonum: Deos fortioribus 'adeſſe.' *Tacit. Hiſt. lib.* 4. *c.* 57.

(5) 'Eſt et alia obſervatio auſpiciorum, qua gravium bellorum 'eventus explorant. Ejus gentis, cum qua bellum eſt, captivum 'quoquo modo intercceptum, cum electo popularium ſuorum, 'patriis quemque armis committunt. Victoria hujus vel illius 'pro praejudicio accipitur.' *Tacit. de Mor. Germ. c.* 10.

An

An inſtance of the duel is deſcribed in *Livy*, *lib.* 28. *c.* 21. And the prevalence of this mode of trial is mentioned by *Paterculus*, *lib.* 2. *c.* 118. It was by ſingle combat that the Celtic and Gothic nations decided the ſucceſſion to offices, when the candidates were numerous and of equal merit. This was leaving it to the Deity to determine their pretenſions. It was in this manner, that, among the Gauls, the place of the ſovereign Druid was ſupplied, in caſes of doubt. 'His autem omnibus 'Druidibus praeeſt unus, qui ſummam inter eos habet auctorita-'tem. Hoc mortuo, ſi quis ex reliquis excellit dignitate, ſuc-'cedit. At ſi ſunt plures pares ſuffragio Druidum adlegitur: 'Nonnunquam etiam de principatu *armis contendunt*.' *Caeſar*, *de Bell. Gall. lib.* 6. *c.* 12.

This form of deciding controverſies and diſputes, continued to prevail after the conqueſts of the barbaric nations; is to be ſeen every where in their laws; and became an important article in the juriſprudence of the middle times. The following ordinances illuſtrate its uſe and purpoſes.

'Qui terram ſuam occupatam ab altero dixerit, adhibitis ido-'neis teſtibus, probat eam ſuam fuiſſe: Si occupator contradixe-'rit, *campo dijudicetur*.' *LL. Saxonum*, *tit.* 15.

'Si quis Adalingum occiderit DC. ſol. componat. Qui libe-rum occiderit, CC. ſol. componat. Et de utroque ſi negaverit, cum

'cum xii. juret, aut in *campum exeat*, utrum ille voluerit, ad 'quem cauſa pertinet.' *LL. Angl. et Werinor. tit.* 1.

'Qui domum alterius noctu incenderit, damnum triplo ſarciat, 'et in fredo ſolid. lx. aut ſi negat, cum undecim juret, aut *cam-* '*po* decernat.' *Ibid. tit.* 8.

'Si aut calumniator, aut ille cui calumnia irrogata eſt, ſe ſo- 'lum ad ſacramenti myſterium perficiendum protulerit, et dixe- 'rit: Ego ſolus jurare volo, tu ſi audes nega ſacramentum me- 'um, et armis mecum contende. Faciant etiam illud, ſi hoc eis ita 'placuerit; juret unus, et alius neget, et in *campum* exeant.' *LL. Friſion. tit.* 11. *l.* 3.

'Si mulier in morte mariti ſui conſiliata fuerit per ſe, aut per 'ſuppoſitam perſonam, ſit in poteſtate mariti ſui de ea facere 'quod voluerit: Similiter et de rebus ipſius mulieris. Et ſi illa 'negaverit, liceat parentibus eam purgare aut per ſacramentum, 'aut per *pugnam*, id eſt, per *campionem*.' *LL. Longobard. lib.* 1. *tit.* 3. *l.* 6.

Even from rude times, it is obſervable, that this trial took place at the command of the magiſtrate. And, it is probable, that it was in a good meaſure at his diſcretion, whether it took effect. If the truth was to be inveſtigated by witneſſes, ſo that complete evidence appeared, and there was no room for doubt,

the battle might be avoided. It was, however, much to the taſte of martial times. The barbarians, alſo, believed firmly that providence actually interfered in their affairs. And this abſurdity was encouraged by the Chriſtian clergy, who, like the prieſts of all religions, found an intereſt in deceiving the vulgar.

(6) The word *nidering* or *nidernig*, was a term of diſhonour among the Normans and Danes; and, it is told by the hiſtorians of William Rufus, that, on an occaſion which required the ſpeedy aid of his vaſſals, including in his ſummons, that thoſe of them who neglected to repair to him ſhould be accounted *nidering*, his ſtandard was immediately crouded. *Du Cange, voc. Nidering.*

To apply to a perſon the term *arga* among the Longobards, was to ſay, that he was a *coward* and a *worthleſs* fellow; and this offence to his honour could not be pardoned. If the accuſer perſiſted in the aſſertion, the *combat* took place; and, if he confeſſed his crime, he was ſubjected to a fine. *LL. Longobard. tit. 5. l. 1.*

Of *arga*, it is remarkable, that, in its original and proper ſignification, it meant a perſon who permitted the infidelities of his wife. 'Proprie *arga* is dicitur,' ſays *Du Cange*, 'cujus uxor moe-'chatur, et ille tacet.' *Gloſſ vol. 1. p. 319. Spelm. p. 40.* A perſon of this kind was infamous in the extreme, and generally of

of the vileſt condition. The word *cucurbita* had alſo this ſenſe; and hence the French *coucourd*, and our *cuckold*. Each of theſe terms, accordingly, in its enlarged acceptation, came naturally enough to ſignify a *mean*, *cowardly*, and *ſtupid fellow*. To have a *caput cucurbitinum*, was to be a *block-head*. And, from the confuſion of the proper ſenſe of *cucurbita*, and its enlarged one, the infamy ſeems to have ariſen which, to this hour, conſtantly attends even an *involuntary cuckold*. It is thus, that even words operate upon manners.

The point of honour in Sweden, in early times, is well illuſtrated by the following law, which I give in the words of *Stiernhook*, whoſe book is not commonly to be met with.

'Si dicat vir viro probroſum verbum: Non es vir viri compar, 'aut virili pectore: Ego vero ſum vir [inquit alter] qualis tu. Hi 'in trivio conveniunto. Si comparet provocans, nec provocatus; 'talis eſto [provocatus] ſequior ut dictus fuit, ut qui nec pro fe-'mina nec viro ſacramentalis eſſe queat, inteſtabilis: Si vero com-'paret provocatus, nec provocans, quam vehementiſſime trino 'immani clamore exclamet, et ſignum in terra radat, et ſit vir 'ille [provocans] eo deterior, quod verba locutus eſt, quae prae-'ſtare non auſus ſit. Si jam uterque comparent, juſtis inſtructi 'armis, et cadat provocatus, dimidio mulctae pretio [caedes] 'expiator. Si vero provocans cadit, imputet temeritati. Capi-

'talis ei linguae ſuae petulantia, jaceat in campo inexpiatus.' *De Jure Sueonum et Gothorum vetuſto, lib.* 1. *c.* 6.

Among the antient Germans, in the age of *Tacitus*, the point of honour was carried ſo high, that a gameſter having riſked and loſt his liberty and perſon on the laſt throw, ſubmitted to voluntary ſervitude, allowing himſelf, though ſtronger and younger than his antagoniſt, to be bound and ſold by him. 'Ea eſt in re prava pervicacia; ipſi *fidem* vocant.' *Tacit. de Mor. Germ. c.* 24. The other words of the paſſage are: 'Alea quod mirere, ſobrii inter feria exercent, tanta lucrandi perdendive temeritate, ut cum omnia defecerunt, extremo ac noviſſimo jactu, de libertate et de corpore contendant. Victus voluntariam ſervitutem adit: quamvis junior, quamvis robuſtior, alligare ſe ac venire patitur.'

It is not foreign to the purpoſes of this work, to remark, that the paſſion for play followed the conqueſts of the barbarians; that many ordinances were made to ſuppreſs it; and that, to this hour, it is a *point of honour* to extinguiſh game-debts. There is ſomething intereſting in this ſubject, and I cannot leave it without ſtarting a conjecture.

The idea of borrowing under an obligation of repayment, was too cultivated for the German gameſter. When he had loſt every

every thing *, he therefore ſtaked his liberty and his perſon. Having left his woods, he improved upon this uſage; and, inſtead of endangering his perſon, gave a *pledge* as a ſecurity that he would pay his loſs. '*Wadia dabat.*' *Lindenbrog. Gloſſ. voc. Wadium.* The uſage was not loſt. 'En 1368,' ſays a French hiſtorian, 'le Duc de Bourgogne ayant perdu ſoixante francs á la 'paume contre le Duc de Bourbon, Meſſire Guillaume de Lyon 'et Meſſire Guy de la Trimouille, *leur laiſſa, faute d'argent, ſa 'ceinture*: Laquelle il donna encore depuis *en gage* au Comte 'd' Eu pour quatre vingt francs par lui perdu au meme jeu.' *Le Laboureur, ap. Saint Foix. tom.* 1. *p.* 343.

The cuſtom of *pledges* introduced by gaming, grew common in other tranſactions, and in debts of every kind. From moveables, which were the firſt pledges, a tranſition was ſoon made to land. Hence the *mortuum-vadium* †, the pawn of land, or the

* It does not appear what the German uſually played for. It might be, ſometimes, the coins of the Romans. 'Jam et pecuniam accipere docuimus.' *Tacit. de Mor. Germ. c.* 15. His chains and ornaments, utenſils and furs, were probably his common ſtakes.

† 'It is called a *dead-gage*,' ſays *Cowel*; 'becauſe, whatſoever profit it yieldeth, yet 'it redeemeth not itſelf by yielding ſuch profit, except the whole ſum borrowed b 'likewiſe paid at the day.' *The Interpreter, voc. Mortgage.*

the mortgage ; and hence alſo the legal doctrine of *diſtreſſes* *. Such a mixture is there of whim and accident in the greater as well as the minuter precautions of civil polity !

(7) The forms of trial in the *duel* at common law, and in the *duel* for points of honour, were diſtinct. This ſubject will be treated in the ſequel.

(8) ‘ Genus ſpectaculorum unum atque in omni caetu idem. ‘ Nudi juvenes, quibus id ludicrum eſt, inter gladios ſe atque in- ‘ feſtas frameas ſaltu jaciunt. Exercitatio artem paravit, ars de- ‘ corem. Non in quaeſtum tamen aut mercedem. Quamvis ‘ audacis laſciviae pretium eſt, voluptas ſpectantium.’ *Tacit. de Mor. Germ. c.* 24.

There is a remarkable paſſage in *Procopius* with regard to King *Totilas*, from which we may learn the dexterity which was exhibited in ſuch military ſports.

‘ Ipſe

* ‘ *Namium* et *namus*] Captio, a Sax. naman, al. nyman capere. Voces priſci ‘ fori, haec apud Scotos, illa apud Anglos veteres uſitatior : Res, bona, animalia, ‘ quae per *diſtrictionem* capiuntur ſignificantes : Hoc eſt, ea quae a poſſeſſore auſe- ‘ runtur, legitimèque retinentur, mulctae vel *pignoris* nomine, quouſque id fecerit ‘ vel praeſtiterit, quod non ſine injuria recuſaverit.’ *Spelm. Gloſſ.* See farther *the other Gloſſaries, and Coke on Littleton.*

'Ipſe equo eximio vectus, inter geminas acies armorum lu-
'dum ſcite ludebat. Equum enim circumagens ac reflectens u-
'troque verſum, orbes orbibus impediebat. Sic equitans, haſtam
'in auras jaculabatur, eamque, cum tremula relaberetur, aripic-
'bat mediam, et ex altera manu in alteram ſaepe trajiciens, ac
'dextere mutans, operam huic arti feliciter navatam oſtendebat:
'reſupinabat ſeſe, et flexu multiplici nunc huc nunc illuc ita in-
'clinabat, ut appareret diligenter ipſum a pueritia didiciſſe ſal-
'tare.' *Lib.* 4. *c.* 31.

Theſe ideas make a figure even in the paradiſe of the Gothic nations. 'Tell me,' ſays *Gangler* in the *Edda*, 'How do the 'heroes divert themſelves when they are not drinking?' 'Every 'day,' replies *Har*, 'as ſoon as they have dreſſed themſelves, they 'take their arms; and, entering the liſts, fight till they cut one 'another in pieces: This is their diverſion. But, no ſooner does 'the hour of repaſt approach, than they remount their ſteeds all 'ſafe and ſound, and return to drink in the palace of *Odin*.' *The Edda, or antient Icelandic or Runic mythology, ap. Northern Antiquities, vol.* 2. *p.* 108. See alſo *Keyſler, Antiq. Select. Septentr. et Celt. p.* 127.

(9) In the books of the middle times, torneaments are called *ludi militares, militaria exercitia, et imaginariae bellorum proluſiones.* A writer in Du Cange ſays, 'Torneamenta, dicunt quae-
'dam nundinae, vel feriae, in quibus milites ex edicto convenire
'ſolent,

'ſolent, et ad oſtenſionem virium ſuarum et audaciae temere 'congregari, vel congredi.' *Gloſſ.* voc. *Torneamentum.*

Theſe exerciſes were the great ſchools of diſcipline and war. Their high antiquity on the continent may be ſeen in the diſſertations on the hiſtory of St Louis. And, there is mention of them in England in the days of King Edgar, and at a more antient period. *Selden, duello, ch.* 3. Mr Madox was therefore in a great miſtake, when he aſcribed the riſe of the ſpirit of torneying to the holy wars. *Bar. Angl. p.* 281.

The frequent accidents which neceſſarily happened in the exerciſe of theſe repreſentations of war, through the impetuoſity of valour, and the extravagance of heroiſm; the fulminations of the church; and, above all, the jealouſy of princes which was excited by armed nobles and their retainers, gave them powerful checks. They continued, notwithſtanding, to be long in faſhion. In England, they were practiſed in the reign of Queen Elizabeth; and their total diſappearance was preceded, under the elder James and his ſon Charles, by a gentle method of them, termed *carouſals.*

Torneaments originally were celebrated by all warriours at their pleaſure. In after times, the ſovereign, as the head of chivalry and arms, claimed their direction, and iſſued out his licenſes and prohibitions. Richard I. by the following patent to Hubert, Arch-

Archbiſhop of Canterbury, gave licenſe for liſts or torneaments in five places within the kingdom.

'Sciatis nos conceſſiſſe, quod torneamenta ſint in *Anglia* in 'quinque placeis, inter *Sarum* et *Wilton*, inter *Warwick* et *Ke-* 'lingworth, inter *Stamford* et *Walingford*, inter *Brakeley* et *Mixe-* 'ber, inter *Bly* et *Tikehill*, ita quod pax terrae meae non infrin- 'getur. Et comes qui ibi torneare voluerit, dabit nobis 20 mar- 'cas, et baro 10 marcas, et miles, qui terram habuerit, 4 mar- 'cas, et qui non habuerit, 2 marcas. Nullus autem extraneus 'ibi attorneabit. Unde vobis mandamus, quod ad diem torneа- 'menti habeatis ibi 2 clericos et 2 milites veſtros, ad capiendum 'ſacramentum de comite et barone, quod nobis de praedicta pe- 'cunia ante torneamentum ſatisfaciet, et quod nullum torneare 'permittant antequam ſuper hoc ſatisfecerit; et inbreviari faci- 'ant quantum et a quibus receperint. Et 10 marcas pro carta 'ad opus noſtrum capiatis, unde comes *Sarum*, et comes de *Clara*, 'et comes de *Warrena* plegii ſunt. Teſte meipſo, apud villam 'epiſcopi 22 die Auguſti.' *Ex lib. Rubro Scaccarii, ap. Selden in the Duello, ch.* 3.

Edward I. and Edward III granted the liberty of holding yearly a juſt *viris militaribus comitatus Lincoln.* Richard Redman, and his three companions in arms, had the licenſe of Richard II. *haſtiludere cum Willielmo Halberton cum tribus ſociis apud civitat. Carliol.* And a ſimilar liberty was granted to John

de Gray by Henry IV. *Cottoni Poſthuma*, *p.* 63. Edward I. commanded, by proclamation, that no torneaments or juſting, or ſeeking of adventures, and no feats of arms ſhould be celebrated or undertaken without his permiſſion. 'Publice fecit 'proclamari, et firmiter inhiberi, ne quis, ſub forisfactura terra-'rum et omnium tenementorum, torneare, bordeare, juſtas face-'re, aventuras quaerere, ſeu alias ad arma ire praeſumat, ſine li-'centia Regis ſpeciali.' *Cot. Poſt. p.* 67. There are alſo prohibitions of torneaments by Henry III. and other princes. They command all earls, barons, knights, and others, under their faith, homage, and affection, and under pain of loſing their lands and tenements, that they preſume not to torney, make juſts, ſeek adventures, or go to feats of arms within the realm, without the King's expreſs leave. See *Appendix*, No. V.

(10) 'Tum ad *negotia*, nec minus ſaepe ad *convivia*, proce-'dunt *armati*.' *Tacit. de Mor. Germ. c.* 22.

This uſage continued during the middle times. The poſterity of the Germans went in armour to their parliaments and public councils, and to their private viſits and meetings. Juſtice, ſays *Mezeray*, was rendered among the Franks by people in arms: The axe and the buckler were hung upon a pillar in the midſt of the *malle* or the court. See *his hiſtory under Clotaire* II. From this practice among the Anglo-Saxons, the hundred court was, in ſome counties, called the *Wapentake*. The hundreder, holding

holding up his lance, it was touched by thoſe of all the members, and thus the aſſembly was conſtituted. *LL. Edward. Confeſ. c.* 33. *Wapnu*, ſays Whitelocke, is arms, and *tac*, touch. *Notes upon the King's writ for members of Parliament, vol.* 2. *p.* 39.

To this day, in the kingdoms of Europe, the wearing of a ſword is a part of dreſs. We go in arms to a feaſt as well as to a battle, and retain, in orderly times, a cuſtom which habitual danger, and the defects of legiſlation, made neceſſary to barbarians. The clergy, it ſeems, pertinaciouſly oppoſed the cuſtom, and it was retained with obſtinacy. What is more ſurpriſing, they have ceaſed to exclaim againſt it, and yet it continues!

(11) 'Scutum reliquiſſe praecipuum flagitium. Nec aut ſa-'cris adeſſe, aut concilium inire ignominioſo fas.' *Tacit. de Mor. Germ. c.* 6.

Hence a high compoſition was allowed to the Frank, who had been reproached injurioufly with the loſs of his ſhield. 'Si 'quis homo ingenuus alio improperaverit, quod *ſcutum* ſuum 'jactaſſet, et fuga lapſus fuiſſet, et non potuerit adprobare, DC. 'den. qui faciunt ſol. xv. culpabilis judicetur.' *Pactus legis Salicae, ap. Georgiſch. p.* 69. It was by raiſing him aloft on a ſhield, and ſupporting him on their ſhoulders, that the Germans proclaimed their ſovereign, or lifted up a general to command their armies. *Tacit. Hiſt. lib.* 4. *c.* 15. It was by the ſame ceremony

that the Kings of the Franks were acknowledged. This was their inauguration. The eſcutcheon or ſhield, ſays *Favine*, is the eſſential note of a nobleman, a knight, and an eſquire. *Theatre of Honour*, *book* 1. *ch.* 2.

The uſages which had their riſe from arms, make a curious figure in the Gothic nations. We know from *Tacitus*, that the ſounding or claſhing of arms, expreſſed approbation in the German aſſemblies; that a javelin wet with blood, and a war horſe, were the rewards of German valour; that ſuits of armour were a flattering preſent to the more diſtinguiſhed chiefs in the German communities; that an interchange of arms conſtituted the ceremonial of marriage among this people; and, that their only public amuſement was the leaping amidſt the threatening points of ſwords and lances. *De Mor. Germ. c.* 11. 15. 18. 24.

Charlemagne uſed to ſeal his treaties with the pommel of his ſword: 'With the point of it,' ſaid he, 'I will maintain them.' *St. Foix*, *Eſſ. Hiſt. vol.* 2. *p.* 74. To take his arms from a free man, was to deprive him of his rank, and to reduce him to the condition of a ſlave. *LL. Alfr. c.* 1. And to put into the hands of a ſlave the arms of a free man, was to give him his liberty. When an individual gave his oath in a court, or would bind himſelf in the moſt ſolemn manner to the performance of his contracts, he laid his hand on his ſword. In the judicial combat, the cuſtoms growing out of arms were numerous: Thus,

to

to ſtrike a perſon with a club, or to give him a blow on the face, was to treat him like a villein; becauſe villeins were permitted to fight only with clubs, and were not allowed to cover their faces with armour. *L'eſprit des Loix, liv.* 28. *ch.* 20. A free man could not part with his ſword as a part of his ranſome. *LL. Longobard. lib.* 1. *tit.* 11. *l.* 33. And what ſhows, in a particular manner, the ſeverity of the foreſt-laws, the killing of a royal ſtag inferred the loſs of the ſhield, or the reduction of a free man to a ſlave. *LL. Foreſt. Canut. c.* 25. From the change of arms there reſulted a change of uſages. Thus, when archery was introduced, to wound the finger which ſends off the arrow, was puniſhed more ſeverely than the maiming of the other fingers. *Lindenbr. Gloſſ. voc. Digitus.*

The old Germans ruſhed to battle with a loud noiſe, applying their ſhields to their mouths, that their voices might riſe by repercuſſion into a fuller and more ſonorous ſwell. 'Sunt illis haec 'quoque carmina, quorum relatu quem *barditum* vocant, accen-'dunt animos, futuraeque pugnae fortunam ipſo cantu augurantur; terrent enim, trepidantve, prout ſonuit acies. Nec tam 'voces illae, quam virtutis concentus videntur. Affectatur prae-'cipue aſperitas ſoni, et fractum murmur, objectis ad os ſcutis, 'quo plenior et gravior vox repercuſſu intumeſcat.' *Tacit. de Mor. Germ. c.* 3.

It

It merits obſervation, that, from this uſage, there grew the *cry d'armes* of the middle ages. Theſe cries were ſuppoſed to incite to valour, and to make the ſoldier precipitate himſelf upon the enemy. *Montjoie Saint Denis*, was a famous cry of the Franks. *Deus adjuva*, *Deus vult*, were cries during the cruſades. Every banneret, or every knight who had a banner, had a cry peculiar to himſelf and the troops under him. Barons had alſo their cries. There were thus general and particular cries. While fiefs and the feudal militia continued, theſe cries prevailed in Europe. They were loſt on the introduction of an improved military diſcipline, and of ſtanding armies. Perhaps, it is to theſe cries, that we muſt trace the origin of the mottos to enſigns armorial.

(12) 'Scuta *lectiſſimis coloribus* diſtinguunt.' *Tacit. de Mor. Germ. c.* 6.

On the foundation of the *ſagum*, or the ſhort veſt of the Gaul and the German, which covered his arms, ſhoulders, and breaſt, *coats of arms* aroſe. 'La cotte d'armes a eſté le vêtement le plus 'ordinaire des anciens Gaulois: il eſtoit appellé par eux *ſagum*, 'd'ou nous avons emprunté le mot de *ſaye*, ou de *ſayon*.' *Diſſert. 1. ſur l'Hiſtoire de St Louis, p.* 127. 'Tegumen omnibus '*ſagum*,' ſays *Tacitus, c.* 17.

According to this inſtructive hiſtorian, the ſagum was adorned with ſpots and with bits of fur. 'Eligunt feras, et detracta vela-'mina ſpargunt maculis, pellibuſque belluarum.' *c.* 17. And we

we know from *Herodian*, that it was ſometimes ornamented with ſilver. *Lib.* 4.

Theſe things are very curious; and it is impoſſible not to ſee in them the *colours*, the *furs*, and the *metals* which are the materials of the ſcience of blazonry.

When *Tacitus* mentions the ſhield, he takes occaſion to remark, that the German warriours had the knowledge of *coats of mail*, and of *head-pieces* or *helmets*, but ſeldom made uſe of them. His words are 'Paucis loricae, vix uni alterive caſſis, aut galea.' *c.* 6. They were about to be more faſhionable.

(13) Valer. Maximus, lib. 5. c. 6. Florus, Rom. Rer. Hiſt. lib. 3. c. 3.

(14) Theſe captives were of the tribe of the *Catti*, a Germanic people; for, it is ſurely this tribe that *Dio* means, when he ſpeaks of the *Cenni*. 'Horum captae a Romanis uxores, interrogatae ab Antonino, utrum vendi, an occidi mallent, mori ſe malle reſponderunt: quumque eſſent poſtea venditae, omnes mortem ſibi conſciverunt: Nonnullae una filios interfecerunt.' *Excerpt e Dion. p.* 876. A multitude of examples, to the ſame purpoſe, might eaſily be collected, if it were neceſſary.

But,

But, while we reflect on theſe things, it muſt not be fancied, that the German women were deficient in gentleneſs. A high independent ſpirit is not inconſiſtent with the ſofteſt paſſions. There are a few beautiful and energetic words in *Tacitus*, which may be employed on this occaſion, and finely expreſs the diſtinctive characters of the ſexes in antient Germany. 'Lamenta 'ac lacrymas cito: dolorem et triſtitiam tarde ponunt. *Feminis* 'lugere honeſtum eſt; *viris* meminiſſe.' *De Mor. Germ. c.* 27.

(15) Tacit. de Mor. Germ. c. 7.

(16) Saint Foix, Eſſais Hiſtoriq. ſur Paris, tom. 5. p. 184.

(17) 'Regnator omnium Deus, cetera ſubjecta atque parentia.' *Tacit. de Mor. Germ. c.* 39. This teſtimony of the purity of the German theology, is well illuſtrated by the following paſſage of the Icelandic Edda.

'*Ganglerus* orſus eſt tunc ſuum ſermonem. Quis eſt ſupre-'mus, ſeu primus deorum? *Har.* reſpondet: Qui noſtra lingua 'Pantopater dicitur. Tunc *Gang.* Ubi eſt hic Deus? Aut quid 'poteſt efficere? Aut quid voluit ad gloriam ſuam manifeſtan-'dam? *Har.* reſp. *ille vivit per omne aevum, ac gubernat om-'ne regnum ſuum, et magnas partes er parvas.*' *Edda, ap. Northern Antiq. vol.* 2. *p.* 283.

(18)

(18) 'Auſpicia, ſorteſque ut qui maxime obſervant.' *Tacit. de Mor. Germ c.* 9. See alſo, *Du Cange*, voc. *Aucones et Sors.* The following form of divination was common to all the German tribes. '*Virgam* frugiferae arbori deciſam, in ſurculos amputant, eoſque notis quibuſdam diſcretos ſuper candidam veſtem temere ac fortuito ſpargunt. Mox ſi publice conſulatur ſacerdos civitatis, ſin privatim, ipſe pater familiae precatus deos, coelumque ſuſpiciens, ter ſingulos tollit, ſublatos ſecundum impreſſam ante notam interpretatur.' *De Mor. Germ. c.* 10. Of this folly, there is yet a remain in the *Baguette Divinatoire* of the miners in Germany; and it is to be obſerved, that the heralds of the Franks had *conſecrated twigs*, which they bore as the emblems of peace. Thus the heralds ſent by Gundobald to Guntram appeared 'cum virgis *conſecratis*, juxta ritum Francorum, ut ſcilicet non contingerentur ab ullo.' *Gregory of Tours, lib. 7. c.* 32. But, what is more remarkable, theſe *twigs* came to figure in the inveſtiture of lands. Hence the feoffment or ſaſine *per fuſtem et per baculum, per virgam et per ramum.* Hence the *tenure par la verge*, which is formally treated by Littleton. On what a ſimple foundation does there riſe inſtitutions, important and intereſting in buſineſs and ſociety!

(19) Hence the Gothic ordeals, the fire ordeal, and the water ordeal. Of the antiquity of theſe trials I have ſpoken in another work. *Diſſert. on the Antiq. of the Eng. Conſtitut. part* 4. It is obſevable, that the trials of fire and water, though abſurd

in the greateſt degree, were much encouraged by the Chriſtian clergy. What is more diſgraceful to them, they invented modes of trial, founded in the ſame ſuperſtition, and not leſs abſurd. Theſe were the judgment of the croſs, the corſned or conſecrated morſel, the Euchariſt, and the *ſortes ſanctorum*. By the firſt, the criminal was to remain with his arms extended before a croſs for ſix or ſeven hours, without motion. If he failed in ſuſtaining this trial, he loſt his cauſe, and was judged guilty. By the ſecond, the accuſed perſon ſwallowed a bit of bread or cheeſe, over which the prieſt had muttered a form of execration. If he was guilty, he was ſuffocated by the morſel; if innocent, he eſcaped without injury. In the judgment of the Euchariſt, the ſymbols of the blood and body of Chriſt were employed; and they convicted the guilty, by acting as a poiſon, which inflicted death or ſickneſs. The *ſortes ſanctorum* conſiſted in the opening, at a venture, the Bible, or any holy book, and in conſidering as oracular the firſt paſſage that preſented itſelf. See *Du Cange*, *voc. Crux*, *Corſned*, *Euchariſtia*, *Sors*. This impiety, and theſe impoſitions on the common underſtanding of mankind, advanced the temporal emolument of the prieſthood; an end, which is at all times more important to them than the intereſts of religion and virtue.

(20) 'Matrem Deum venerantur. Inſigne ſuperſtitionis, *formas aprorum* geſtant. Id pro armis omniumque tutela, *ſecurum* 'deae

'*deae cultorem* etiam inter hoſtes praeſtat.' *Tacit. de Mor. Germ. c.* 45.

'I know a ſong,' ſaid *Odin*, 'by which I ſoften and inchant 'the arms of my enemies, and render their weapons of none ef-'fect. I know a ſong which I need only to ſing, when men 'have loaded me with bonds; for the moment I ſing it, my 'chains fall to pieces, and I walk forth at liberty. I know a 'ſong uſeful to all mankind; for, as ſoon as hatred inflames the 'ſons of men, the moment I ſing it, they are appeaſed. I know 'a ſong of ſuch virtue, that, were I caught in a ſtorm, I can huſh 'the winds, and render the air perfectly calm.' *The Magic of Odin, ap. North. Antiq. vol.* 2. *p.* 217. *Du Cange, Literae Solutoriae, et voc. Incantare.*

By ſecret or magical operations, it was not only ſuppoſed, that men could defend themſelves againſt all dangers whatever, and render themſelves invulnerable; but that they could even change themſelves into wolves, and other animals. The word *werwolff* expreſſed this metamorphoſis, and the extravagancy is to be traced to a diſtant antiquity. 'Neuri, ut accepimus, ſtatis tempori-'bus in *lupos* transfigurantur; deinde, exacto ſpatio quod huic 'ſorti attributum eſt, in priſtinam faciem revertuntur.' *Solinus, c.* 15. To late times this ridiculous fancy was continued down among the Iriſh; and *Camden* was puzzled to account for it. *Britannia by Gibſon, vol.* 2. *p.* 1350.

(21) Theſe things appear clearly and ſtrongly from the laws which were made againſt them, after the introduction of Chriſtianity, and from other authentic evidence. *Capit. Kar. et Lud. lib. 7. LL. Longobard. lib. 2. tit.* 38. *Du Cange, voc. Fons, Arbor, &c. Pelloutier, Hiſt. des Celtes, vol. 2. edit. par Monſ. de Chiniac.*

(22) *Du Cange, voc. Fadus, Fada, Caragus, Duſii, Folleti Daemones, Tempeſtarii. Edda. Keyſler, Antiq. Septentr. et Celt.* Here we have the ſource of the wonders and extravagancies of the old romance.

(23) 'Deo imperante quem *adeſſe bellantibus* credunt.' *Tacit. de Mor. Germ. c. 7.* This deity was called *Teut* or *Tïs*. After the age of *Tacitus*, if I am not miſtaken, he had uſually the name of *Odin*; and, it is of *Odin* that *Wormius* thus expreſſes himſelf, 'Suam implorantibus opem in *bello*, inſtar ſenis mono-'culi equo inſidentis, et albo clypeo tecti, quandoque ſe *conſpi-'cendum* praebuit.' *Monument. Dan. c.* 4.

(24) Traces of the ſpirit of gallantry and love, it is to be remarked, appear in a ſtriking manner, even in the religious ſyſtem of the Gothic nations.

'Freya,' ſays the *Edda*, 'is the moſt propitious of the god-'deſſes. The place which ſhe inhabits in heaven is called "the "union

" union of the people." She goes on horſeback to every place ' where battles are fought, and aſſerts her right to one half of ' the ſlain; the other half belongs to Odin. Her palace is large ' and magnificent; thence ſhe ſallies forth in a chariot drawn by ' two cats. She lends a very favourable ear to thoſe who ſue for ' her aſſiſtance. It is from her that the ladies have received the ' name which we give them in our language. She is very much ' delighted with the ſongs of lovers; and ſuch as would be hap- ' py in their amours, ought to worſhip this goddeſs.' *p.* 76.

In another fable of the *Edda*, there are the following particulars. ' Gefione is a virgin, and takes into her ſervice all chaſte ' maids after their death. Fylla, who is alſo a virgin, wears ' her beautiful locks flowing over her ſhoulders. Her head is ' adorned with a golden riband. She is entruſted with the toil- ' lette and ſlippers of Frigga, and admitted into the moſt impor- ' tant ſecrets of that goddeſs. . . . . Siona employs herſelf ' in turning men's hearts and thoughts to love, and in making ' young men and maidens well with each other. Hence lovers ' bear her name. Lovna is ſo good and gracious, and accords ' ſo heartily to the tender vows of men, that, by a peculiar power ' which Odin and Frigga have given her, ſhe can reconcile lo- ' vers the moſt at variance. Varra preſides over the oaths that ' men make, and particularly over the promiſes of lovers. She ' is attentive to all concealed engagements of that kind, and pu- ' niſhes

'niſhes thoſe who keep not their plighted troth.' *Ibid. p.* 96. 97.

It is alſo remarkable, that, in the Gothic Elyſium, it was beautiful virgins named *Valkyriae*, who poured out their liquor to the heroes. *Keyſler, Antiq. Septr. et Celt. p.* 152.

(25) *St Palaye*, ſpeaking of the candidates for chivalry, ſays, 'Les premieres leçons qu'on leur donnoit regardoient princi-'palement *l'amour de Dieu et des dames*, c'eſt a dire, la religion et 'la galanterie.' *Mem. ſur l'ancienne cheval. tome* 1. *p.* 7. The Chriſtian knight was not leſs devout than the Pagan warriour. Anciently, during the celebration of maſs in every country of Europe, he drew his ſword, and held it out naked, in teſtimony of his readineſs to defend the faith of Chriſt. *Favine, p.* 54. *Keyſler, Antiq. ſelect. Celt. p.* 164.

It was the influence of ſuch manners which induced 'that a-'greeable libertine Boccace very ſeriouſly to give thanks to *God* '*Almighty* and the *Ladies* for their aſſiſtance in defending him 'againſt his enemies;' and which made Petrarch compare 'his 'miſtreſs Laura to Jeſus Chriſt;' circumſtances which appeared ſo abſurd to Mr Hume. See his *Eſſays*, p. 277.

When the Count de Dunois was about to attack the Engliſh army which beſieged Montargis, la Hire, a knight and a man of faſhion

faſhion who ſerved under him, having received abſolution, joined devoutly his hands, and thus prayed. 'Dieu, je te prie que 'tu faſſes aujourd'hui pour la Hire autant que tu voudrois que 'la Hire fiſt pour toi, s'il étoit Dieu, et tu fuſſes la Hire.' *St Foix, Eſſ. hiſt. tome* 1. *p.* 347.

A picture, not leſs ſtrange, and ſtill more profane, is in the poetry of *Deudes de Prades*, a canon who had the reputation of being wiſe and ſpiritual. He thus laments the death of Brunet, a troubadour, or one of the provencal bards. 'Il chantoit ſi 'bien, que les roſſignols ſe taiſſoient d'admiration pour l'entendre. 'Auſſi Dieu l'a t'il pris pour ſon uſage. Je prie Dieu de le pla-'cer a ſa droite. Si la Vierge aime les gens courtois, qu'elle 'prenne celui-la.' *Hiſtoire litteraire des Troubadours, tome* 1. *p.* 320.

Theſe ſtrokes are expreſſive, and illuſtrate, more than the moſt careful reaſonings, the nature and ſpirit of the devotion of the ages of chivalry. Amidſt the decencies and the proprieties which philoſophy introduces in cultivated times, we look back, with ſurpriſe, to this groſs familiarity with the ſupreme Being, and to this blaſphemous inſolence. Yet, it is difficult, at the ſame time, not to remember, that theſe things are equalled, if not exceeded, among us, by thoſe gloomy and fanatical men, who, having got what they term the *new light*, conceit themſelves the ſociety of the *elect*, and the *friends* of God!

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## SECTION V.

(1) THE character or ſtation which preceded knighthood, was that of the *ecuyer*, or armour-bearer. The candidate for chivalry had formerly been a *page*, a *valet*, or a *damoiſeau*. The laſt term was applied to the ſons of men of rank. *G. André de la Roque, Traité de la nobleſſe, p.* 7. *Moeurs des François par le Gendre, p.* 63. *Daniel, Hiſt. de la milice Françoiſe, tome* 1. *p.* 94. 95. *St Palaye Mem. ſur l'anc. Cheval. partie* 1.

In thoſe times, the terms *page* and *valet* were not expreſſive of meanneſs and low condition, as at preſent. *Du Cange, voc. Valeti et Domicellus. Sir John Forteſcue*, who was chief juſtice under Henry VI. has obſerved, when ſpeaking of England, 'Sunt *Valecti* diverſi in regione illa qui plus quam ſexcenta ſcuta 'per annum expendere poſſunt.' *De Laud. Leg. Angliae, c.* 29.

(2) The age of knighthood, it is probable, varied with the nature and weight of the arms which were in uſe at different periods. In general, it has been fixed by antiquaries and hiſtorians at 21 years. This rule, however, could be infringed in favour

favour of ſignal merit or high birth. The noviciate of the knight commenced in his ſeventh year. In that tender age, he turned his attention to the art of war, his miſtreſs, and his catechiſm. *Daniel, Milice Françoiſe, lib.* 3. *ch.* 4. *Reliq. Spelman, p.* 174. *St Palaye, Mem. ſur l'anc. Cheval. partie* 1.

(3) The power of the German prieſts did not eſcape the penetration of *Tacitus*. 'Neque animadvertere, neque vincire, 'neque verberare quidem niſi ſacerdotibus permiſſum.' *De Mor. Germ. c.* 7. The Chriſtian prieſts were no leſs ſelfiſh and ambitious. In every country of Europe, they attained immenſe wealth, and prodigious influence. They preſided in the inferior courts with the civil magiſtrates; they took their ſeats in the national aſſemblies; and, in the preambles of the barbaric laws, they are often mentioned next to the Kings themſelves. 'Inci-'piunt,' ſays the prologue to the Capitularies of Charlemagne, 'capitula regum et *epiſcoporum*, maximeque nobilium omnium 'Francorum.' *Baluz. Capit. Reg. Franc. tome* 1. *p.* 698. It is thus, alſo, in ſome of the prefaces to the Anglo-Saxon laws. The powers they aſſumed were exorbitant, and often improperly exerciſed. To uſe the ſtrong language of *Bacon*, 'they were 'lovers of lordſhips, and troublers of ſtates.' *Hiſt. and polit. diſcourſe on the laws and government of England.*

(4) Selden, Tit. hon. part. 2. ch. 5. ſect. 34. 35. Aſhmole, Inſtitutions of the Garter, ch. 1. ſect. 9. Du Cange, voc. Miles.

Daniel, Milice Françoiſe, lib. 3. ch. 4. La Roque, p. 354. 356. A deſcription of the ceremonies uſed at the creation of knights of the bath, is inſerted in the *Appendix*, No. 6. They were nearly the ſame with thoſe employed in the creation of the knight-bachelor, and illuſtrate the manners of old times.

(5) The *feſtum tyrocinii*, which is the name given in the old hiſtorians to the rejoicings on the inveſtiture of knighthood, often laſted many days; and, in the caſes of perſons of diſtinction, was ſolemnized with torneaments and ſhows. The ſeaſon of torneaments was alſo embraced as a fit occaſion for conferring knighthood on thoſe whoſe birth and fortune did not entitle them to exhibit theſe ſolemnities. And this, from the principle of giving encouragement to the military art. For the ſame reaſon, public entries into cities, coronations, and feſtivals of every kind, were opportunities for the creation of knights.

(6) Spelman, voc. Auxilium. Aſhmole, ch. 1. ſect. 9. St. Palaye, tom. 1. p. 195. 248. Daniel, Milice Françoiſe, liv. 3. ch. 4.

When the celebrated Joan d' Arc raiſed the ſiege of Orleans, the Engliſh commander, the Earl of Suffolk, 'was obliged to yield himſelf priſoner to a French man called Renaud; 'but, before he ſubmitted, he aſked his adverſary whether he 'was a gentleman? On receiving a ſatisfactory anſwer, he demanded,

'manded, Whether he was a *knight?* Renaud replied, That he 'had not yet attained that honour. *Then I make you one,* replied 'Suffolk. Upon which he gave him the *blow* with his ſword, 'which dubbed him into that fraternity; and he immediately 'ſurrendered himſelf his priſoner.' *Hume, vol. 2. p.* 340.

(7) The knights affected great magnificence, and more particularly after the holy wars. 'Portabant autem diverſi generis 'ſpecies precioſas, aurum et argentum, pallia oloſerica, purpu-'ram, ſiclades, oſtrum et multiformium veſtium ornamenta; 'praeterea arma varia, tela multiplicis generis, infinitas loricas, 'culcitras de ſerico acu variatas operoſe, papiliones et tentoria 'precioſiſſima,' &c. *Brompton, ap. Baron. Angl. p.* 281.

(8) The horſe and armour of a knight were called his *contenementum,* or *countenance. Selden, Tit. Hon. part 2. ch. 5. ſect.* 37.

The reſpectful behaviour, even to vanquiſhed knights, and indeed the extreme honour in which knights in general were held, is exemplified very ſtrongly in the conduct of Edward III. to Euſtace de Ribaumont. This prince thought it neceſſary to leave England privately for the protection of Calais, and carried with him the Prince of Wales. The day after his arrival at Calais, a battle enſued between his troops and the French forces commanded by Geoffrey de Charni, who, notwithſtanding the

truce which had been concluded between the contending powers, had bribed the governor of Calais to ſurrender the place to him. To prevent this circumſtance, was the intention of Edward's viſit.

This great prince, who fought as a private gentleman under Sir Walter Manny, encountered Euſtace de Ribaumont, a hardy and valorous knight, who beat him twice to the ground. Puſhed to extremity, Edward had occaſion for all his ſtrength and addreſs. After an encounter, ſharp and dangerous, he vanquiſhed his antagoniſt, who ſurrendering his ſword, yielded himſelf his priſoner. The next day the Engliſh enjoyed their victory, and in the evening the French priſoners were invited to ſup with the Prince of Wales and the Engliſh nobility. After ſupper, Edward himſelf entered the apartment, and converſed, in a ſtrain of compliment and familiarity, with the priſoners. His behaviour to his antagoniſt Euſtace de Ribaumont was more particularly attentive, and is thus deſcribed by *Froiſſard*. 'Vint le Roi 'à Meſſire Euſtache de Ribaumont: Vous êtes le chevalier au 'monde que veiſſe onques plus vaillamment aſſaillir ſes enemis, 'ne ſon corps deffendre, ni ne me trouvai onques en bataille où 'je veiſſe qui tant me donnaſt affaire corps á corps, que vous 'avez hui fait; ſi vous en donne le prix ſur tous les chevaliers 'de ma court par droite ſentence. Adonc print le roi ſon cha-'pelet qu'il portoit ſur ſon chef (qui etoit bon et riche) et le meiſt 'ſur le chef de Monſeigneur Euſtache, et dit: Monſeigneur Eu-'ſtache,

'ſtache, je vous donne ce chapelet pour le mieux combattant de 'la journée de ceux du dedans et du dehors, et vous prie que 'vous le portez cette année pour l'amour de moi. Je ſai que 'vous êtes gai et amoureux, et que volontiers vous trouvés entre 'dames et damoiſelles, ſi dites par tout où vous irez, que je le 'vous ai donné. Si vous quite votre priſon, et vous en pouvez 'partir demain, s'il vous plaiſt.' *an.* 1348.

(9) Favine, Theater of Honour, book. 1. St Palaye Mem. ſur l'anc. Cheval. partie 4. Selden, Tit. hon. part 2. ch. 5. ſect. 37.

(10) The chief ſtrength of armies conſiſted, at this time, of cavalry. The ſkilful management of a horſe was, of conſequence, one of the great accompliſhments of a knight or a warriour. It is to be noticed, that this way of thinking characterized ſome of the German tribes, even in the age of *Tacitus*. The following energetic deſcription of the Tencteri, is applicable, in a ſtriking manner, to the purer ages of chivalry. 'Tencteri 'ſuper ſolitum bellorum decus, equeſtris diſciplinae arte praecel-'lunt. Nec major apud Cattos peditum laus, quam Tencteris 'equitum. Sic inſtituere majores, poſteri imitantur. *Hi luſus* '*infantium, haec juvenum aemulatio, perſeverant ſenes.*' *De Mor. Germ. c.* 32.

(11)

(11) Hence the diſtinction of knights *banneret* and knights *bachelors*; the latter expreſſion denoting the ſimple knight; the former, the knight who had a ſtandard and followers. The number of knights and eſquires who ſerved under the banneret, varied in proportion to his riches, and influence. It is alſo obſervable, that this dignity was not always feudal. It was ſometimes perſonal. *Selden, Tit. hon. part* 2. *ch.* 3. *ſect.* 23. *and ch.* 5. *ſect.* 39. *Du Cange, Diſſert. ſur l'Hiſtoire de S. Louis. Spelm. voc. Banerettus. Daniel, Milice Françoiſe, liv.* 3. *ch.* 5.

(12) Favine, Theater of Honour, book 10. St Palaye, Mem. ſur l'anc. Cheval. partie 6.

(13) An old ceremonial of chivalry has theſe words: 'Le Roy 'Artus d'Angleterre, et le Duc de Lencaſtre ordonnerent et fi-'rent la table ronde, et les behours, tournois, et jouſtes, et moult 'd'autres choſes nobles, et jugemens d'armes, dont ils ordonnerent 'pour juger, *dames* et *damoiſelles*, Roys d'armes et heraux.' *Diſſert.* 7. *ſur l' Hiſtoire de S. Louis, p.* 179.

(14) The greater torneaments were thoſe given by ſovereigns and princes, to which knights were invited from every part of Europe; for, over Chriſtendom, the honour and privileges of knighthood were the ſame. The leſſer torneaments were thoſe given by the barons.

It

It deſerves obſervation, that the exhibition of torneaments produced an intercourſe between the nations of Europe, which could not but contribute to knowledge and civilization. When there were no expreſs prohibitions, knights followed the more important torneaments wherever they were celebrated, for the purpoſe of ſtudying the art of war; and that they might find ſignal and proper opportunities of diſtinguiſhing themſelves, and of cultivating the friendſhip and acquaintance of illuſtrious perſons of both ſexes. It was even the faſhion for knights to avoid the reſtraint of marriage for ſome years after their inſtallation into the order, that they might conſecrate them to the travelling into diſtant countries, and the viſiting of foreign courts, 'a fin de s'y 'rendre *chevaliers parfaits*.' *St Palaye, tom.* 2. *p.* 8.

From theſe circumſtances, it is obvious, that the ſtrong concluſions of Dr Robertſon, concerning the little intercourſe between nations, during the middle ages, are not to be relied upon in all their force, but to be underſtood with much reſerve, and many limitations. *Hiſt. of Charl.* V. *vol.* 1. *p.* 325. *et ſeq.*

(15) This preſent was called *faveur*. *St Palaye, tom.* 1. *p.* 95. Hence the pieces of lace or riband which are yet ſometimes diſtributed at marriages, are termed the bride's *favours*.

(16) It would be tedious to enumerate and to deſcribe the different forms of exerciſe or combat which were practiſed in the torneaments;

torneaments; and it is not neceſſary in this work. The *jouſte* was the combat of one againſt one; *les armes á outrance*, were the combats of ſix againſt ſix, and conſiſted occaſionally of more or fewer perſons. *Le pas d'armes*, was the defence of a paſs by one or more perſons againſt every aſſailant. The curious reader may conſult the books which treat expreſsly of torneaments.

(17) Favine on torneaments. St Palaye, Mem. ſur l'anc. Cheval. partie 2.

(18) 'Effigieſque et ſigna quaedam detracta lucis in praelium 'ferunt.' *Tacit. de Mor. Germ. c.* 7. The poſterity of the Germans were equally ſuperſtitious under the light of the goſpel. 'Les Germains,' ſays *St Foix*, who had this paſſage of Tacitus in his eye, 'portoient á la guerre des drapeaux, et des figures 'qui étoient en depôt pendant la paix dans les vois ſacrées.' He adds, 'Nos Rois alloient prendre de même la chappe de 'S. Martin ſur ſon tombeau, et l'oriflamme dans l'egliſe de S. 'Denis, et les reportoient lorſque la guerre etoit finie.' *Eſſ. Hiſt. ſur Paris, tom.* 2. *p.* 187.

(19) The Edda, Keyſler, Antiq. ſelect. Septentr. p. 149.—163. Pelloutier, Hiſt. des Celtes, liv. 3. ch. 18.

(20)

(20) The diſcerning reader will perceive, that I deſcribe Chriſtianity from the writings of the clergy; becauſe, it is always from their repreſentations of it that it acts upon ſociety and manners. I therefore ſpeak politically, and not as an inquirer into theology.

From the pretended friends of Chriſtianity, and from its moſt zealous partizans, too, I fear, it has received deep and cruel wounds. Its moſt enlightened and genuine admirers have reaſon to regret, that it has not been left to defend itſelf. Were it poſſible to deſtroy the comments, the explanations, the catechiſms, and the ſyſtems of divines, a very conſiderable blow would be given to infidelity. One can reſpect the honeſt doubts of philoſophy. But, is it poſſible to with-hold indignation or ſcorn, when ability ſtoops to be uncharitable and diſingenuous, when bigotry preſſes her folly, and ſpits her venom?

(21) It was Gregory VII. whoſe magnificent mind firſt formed the plan of the croiſes. The fanaticiſm, the heroic ſpirit, and the wild enterpriſe of knighthood, ſuggeſted, doubtleſs, the idea of them. The advantages they were to give to the holy ſee, and the church in general, were numerous and great. The Popes not only conferred remiſſion, or pardon of their ſins, on all thoſe who yielded to this madneſs; but, what was no leſs intereſting, they undertook the protection of their families and affairs. The clergy, of conſequence, drew immenſe wealth, by acting as tu-

tors and truſtees for widows, pupils, and minors. The troops deſigned for theſe pious projects, could be employed by the church to protect and enlarge its temporalities; and, under the pretence of recovering the holy ſepulchre, prodigious ſums were to be extracted from women, the devout, the infirm, and the dying.

From the holy wars it followed, that new fraternities of knighthood were invented. Hence the knights of the holy ſepulchre, the hoſpitallers, templars, and an infinite number of religious orders who ſhed blood, and deformed ſociety, for the glory of God. Many of theſe acquired great riches, and all of them increaſed the influence of the church.

Some writers have fancied, but very abſurdly, that the croiſes gave riſe to chivalry. Without chivalry the croiſes could not have been carried into execution. The Popes and the clergy would in vain have preached, that they were the road to ſalvation and the gates to heaven.

From the cultivated ſtate of manners in the eaſt, ſome improvement was imported into Europe by the cruſaders. But the cruſades deſerve not to be conſidered as the firſt, or indeed as a very powerful cauſe of refinement in Europe; though it is to be allowed, that they encouraged a reſpect for order, and ideas of regular government; and that they made additions to the

ſcience

ſcience of heraldry and the faſhions of liveries, and heightened the ſplendour of equipage and dreſs.

When the medal, however, is reverſed, there appear many and great diſadvantages. They drained the kingdoms of Europe of their inhabitants; they took away their riches, and thereby diſcouraged trade and the arts; they removed kings and nobles beyond the ſeas, and introduced into ſtates diſquiets and diſorder; they added to the power of the Roman ſee, by affording favourable opportunities for the operation of its policy, and for eſtabliſhing the right of the Popes to interfere in the temporal affairs of nations; and, in fine, they promoted every pious impertinence, and advanced the moſt abject ſuperſtition.

It is alſo worthy of remark, that ſome writers, who have no tincture of philoſophy, have treated chivalry and the holy wars as primary and diſtinctive cauſes of the refinement of the European ſtates; yet the latter, being really the conſequences of the former, their influence ought to have been aſcribed to them.

The ſame want of penetration is perceivable in thoſe, who, while they urge as a primary ſource of improvement, the revival of literature, hold out, diſtinctively, as another cauſe of it, the civil code, or the laws of the Romans. They might, with equal propriety, record as particular and diſtinctive ſources of refinement, the writings of Cicero, of Livy, or of Tacitus.

During the prevalence of chivalry, it is likewiſe to be obſerved, that the ardour of redreſſing wrongs ſeized many knights ſo powerfully, that, attended by eſquires, they wandered about in ſearch of objects whoſe misfortunes and miſery required their aſſiſtance and ſuccour. And, as ladies engaged more particularly their attention, the relief of unfortunate damſels was the atchievement they moſt courted. This was the riſe of knights-errant, whoſe adventures produced romance. Theſe were originally told as they happened. But the love of the marvellous came to interfere; fancy was indulged in her wildeſt exaggerations, and poetry gave her charms to the moſt monſtrous fictions, and to ſcenes the moſt unnatural and gigantic.

(23) 'Supplicem aut debilem vel arma abjicientem hoſtem occidere, etiam hodie apud Gothos ſempiterno opprobrio dignum computatur.' *Jo. Magnus, Hiſt. Suec. lib.* 4.

In the battle of Poictiers, fought by the heroic Edward Prince of Wales, the King of France was made priſoner; and the behaviour to the captive monarch illuſtrates, more than any particulars I can mention, the nobleneſs of the principles of chivalry. The Earl of Warwick conducted the French king, with many demonſtrations of reſpect, to the Prince's tent.

'Here,' ſays a great hiſtorian, 'commences the real and the truly admirable heroiſm of Edward: For victories are vulgar things,

'things, in compariſon of that moderation and humanity diſco-
'vered by a young prince of twenty-ſeven years of age, not yet
'cooled from the fury of battle, and elated by as extraordinary
'and as unexpected ſucceſs, as had ever crowned the arms of
'any general. He came forth to meet the captive king with
'all the ſigns of regard and ſympathy; adminiſtered comfort to
'him amidſt his misfortunes; paid him the tribute of praiſe due
'to his valour; and aſcribed his own victory merely to the blind
'chance of war, or to a ſuperior providence, which controuls all
'the efforts of human force and prudence. The behaviour of
'John ſhewed him not unworthy of this courteous treatment:
'His preſent abject fortune never made him forget a moment
'that he was a king: More ſenſible to Edward's generoſity than
'to his own calamities, he confeſſed, that, notwithſtanding his
'defeat and captivity, his honour was ſtill unimpaired; and
'that, if he yielded the victory, it was at leaſt gained by a prince
'of ſuch conſummate valour and humanity.

'Edward ordered a magnificent repaſt to be prepared in his
'tent for the priſoners, and he himſelf ſerved the royal captive's
'table, as if he had been one of his retinue. He ſtood at the
'King's back during the meal; conſtantly refuſed to take a place
'at table; and declared, that, being a ſubject, he was too well
'acquainted with the diſtance between his own rank, and
'that of his royal Majeſty, to aſſume ſuch freedom. All his
'father's pretenſions to the crown of France were now bu-
'ried

'ried in oblivion: John, in captivity, received the honours of 'a king, which were refuſed him when ſeated on the throne: 'His misfortunes, not his title, were reſpected: And the French 'priſoners, conquered by his elevation of mind, more than by 'their late diſcomfiture, burſt out into tears of joy and admira-'tion; which were only checked by the reflection, that ſuch ge-'nuine and unaltered heroiſm in an enemy, muſt certainly, in 'the iſſue, prove but the more dangerous to their native coun-'try.' *Hume, hiſt. of England, vol.* 2. *p.* 214. See alſo *Aſh-mole, p.* 673.

Morſels of ſtory like theſe are precious, and diſtinguiſh thoſe hiſtorians who can render inſtructive the details which common writers are only attentive to make agreeable.

(24) The following was one of the oaths adminiſtered by the conſtable in the duel. 'A. de B. ye ſhall lay your hand 'ayen on the holy goſpels, and ſwere that ye ſhall have no moo 'wepnes or poynts, but tho that ben aſſigned you by the con-'ſtable and mareſchall, that is to wite, gleyve, long ſwerd, ſhort 'ſwerd, and dagger: Nor no knyfe, ſmall ne grete; ne none 'engine, ne none othir inſtrument with poynt: Nor ſtone of 'vertue, nor hearb of vertue; nor charme, nor experement, nor 'none othir enchauntment by you, nor for you, whereby ye 'truſt the better to overcome C. de D. your adverſarie, that ſhall 'come ayens you within theſe liſts in his defence; nor that ye 'truſt

'truſt in none othir thynge propirly, but in God and your body, 'and your brave quarell; ſo God you help, and all halowes, 'and the holy golpells.' *Dugdale, origin. juridic. p.* 82.

(25) The ſolemn taking away of the ſword, the cutting off the ſpurs, the tearing from the body the coat of arms, and the bruiſing every piece of the knight's armour, appear to have been ceremonies of the degradation. *Selden, Tit. hon. part* 2. *ch.* 5. *Sect.* 38. *Aſhmole, p.* 620.

Religion came alſo to concern itſelf in a matter ſo important. Prieſts pronounced over the culprit a pſalm, containing imprecations againſt traitors. Water was thrown upon him to waſh away the ſacred character conferred by his inſtallation into the order. And, at length he was dragged on a hurdle to the church, where there were ſaid and performed over him the prayers and the ceremonies which are uſed for the dead. *St Palaye, tome* 1. *p.* 320.

AU-

Authorities, Controverſy, and Remarks.

# BOOK II.

## CHAPTER I.

### SECTION I.

(t) THE ordinary form of homage and fealty varied in ſome little particulars in different nations, and in the ſame nations, at different times; and fidelity, while the fief was precarious, could only be promiſed during the connection of the lord and the vaſſal. The oldeſt example of theſe ceremonies which is preſerved, and perhaps the moſt ſimple, is that of

*Taſſilon* Duke of Bavaria, to King Pepin, in the year 757. It is thus deſcribed. 'Taſſilo Dux Bajoariarum cum primoribus 'gentis ſuae venit, et more Francorum, in manus regis in *vaſſa-* 'ticum manibus ſuis ſemetipſum *commendavit; fidelitatemque*, 'tam ipſi regi Pipino, quam filiis ejus Carolo et Carlomanno, 'jure jurando ſupra corpus Sancti Dionyſii promiſit.' *Adelmus, Annal. Franc. ap. Bruſſel, liv.* 1. *ch.* 1. *ſect.* 7.

From the words *more Francorum* it is to be inferred, that theſe uſages were of a ſtill higher antiquity; and, indeed, there can be little doubt, that they prevailed from the earlieſt times. We find them, accordingly, in the Anglo-Saxon period of our hiſtory. *Nichol. Praefat. ad LL. Anglo-Saxon. p.* 6. 7. It is true, notwithſtanding, that ſome eminent authors contend, that they were conſequences of the perpetuity of the fief. But the homage of Taſſilon, and the Anglo-Saxon fealty, were prior to the general eſtabliſhment of this perpetuity. And there does not appear any ſolid reaſon to think, that theſe ceremonies were a reſult of it.

When the exerciſe of the prerogative of private war among the nobles had ſpread its diſorders and calamity, it became common, both in France and England, to inſert a reſervation in the form of homage, which limited the fidelity of the vaſſals of a lord or a chief, to the acts which were not derogatory to the faith they owed to the king. This was intended as an obſtruc-

tion

tion to the prevalence of private war, and diſcovered an advancement in the ideas of civilization and government. Saint Louis eſtabliſhed it in France; and it appears in England, in what is called 'The Statute of Homage,' in the ſeventeenth year of Edward II. By this form or ordinance, the vaſſal, after expreſſing the fidelity he is to bear to his lord for the lands he holds, is made to add, *ſaving the faith I owe unto our Lord the King.*

Out of theſe uſages, in this ſtate of their reſtriction, there grew, as fiefs died away, the ligeance, or allegiance, which every ſubject, whether a proprietor of land or not, was ſuppoſed to owe to his ſovereign. Thus, the oath of ligeance or fealty was to produce the oath of allegiance.

(2) I have endeavoured to inveſtigate, in another work, the high antiquity of the feudal incidents. *Diſſert. on the Antiq. of the Eng. Conſtitut. part* 2. It is a common miſtake, that the feudal fruits or incidents were not known in England till the Norman times. This opinion is to be aſcribed to the want of curioſity in ſome inquirers of great name, who have given a ſanction to it without deliberation; and to the narrow prejudices of others, who affect to conſider the Norman invaſion as the proper æra of our political conſtitution, from the view of paying a compliment to the prerogative of our kings, by holding out Duke William as a conqueror, and by inſulting the conſequence

of the people. It is in this manner that errors have been engrafted upon errors.

The Anglo-Saxon laws, however, oppoſe the conceit of the late riſe of the feudal incidents, with a force that is not to be reſiſted. They make an actual and expreſs mention of them. And, for formal illuſtrations of the feudal incidents in the Anglo-Saxon times, the reader may conſult, *The caſe of tenures upon the commiſſion of defective titles, argued by the judges of Ireland, Mr Selden, in many parts of his works, and Mr Whitaker, in his hiſtory of Mancheſter.*

One of Canute's laws I cannot forbear to mention, becauſe it illuſtrates very ſtrongly, in this age, the exiſtence of tenures. It ordains that a vaſſal who deſerts, in an expedition againſt an enemy, ſhall forfeit his land to his lord; and that, if he ſhould fall in battle, his heriot ſhall be remitted, and his land go to his heirs. *LL. Canut. c.* 75. This deſertion was, in all feudal countries, one of the cauſes of the eſcheat or forfeiture of the fief. *Spelm. Gloſſ. voc. Felonia.* We thus learn, that, in the age of Canute, there prevailed the feudal incidents of eſcheat and heriot, and that lands were not only granted in tenure, but might go to heirs; a circumſtance which may lead us to conceive, that advances were then made towards the eſtabliſhment of the perpetuity of the fief. This important law is miſinterpreted by Wilkins, and, probably, with deſign. The learned reader will not

not require to be informed, that his verſion of the Anglo-Saxon laws is often defective and unfaithful.

What is worthy of notice, while many writers of England look to Normandy and Duke William for the introduction of the feudal law, and its incidents, into their nation, an author of France, William Roville of Alenzon, in his preface to the grand Couſtumier of Normandy, contends, That they were firſt brought into that duchy from England by Edward the Confeſſor.

The fact is, that theſe fruits and this law extended themſelves over Europe, from no principle of adoption, but from the peculiarity of manners and ſituation of the barbaric nations who made conqueſts. There is no poſition in hiſtory which is clearer than this. And Du Cange, in particular, when we conſider the amazing extent of his information, is very much to blame, while he fondly holds out the tenet, that the uſages and inſtitutions of the European ſtates proceeded chiefly from the manners and cuſtoms of France.

(3) Even in the days of Bracton, after the feudal aſſociation had received its moſt ſtaggering blows, the doctrines of the reciprocal duties of the lord and the vaſſal, and their perpetual league, are laid down in ſtrong language.

'Nihil

'Nihil facere poteſt tenens propter obligationem homagii, 'quod vertatur domino ad exhaeredationem vel aliam atrocem 'injuriam; nec dominus tenenti, e converſo. Quod ſi fecerint, 'diſſolvitur et extinguitur homagium omnino, et homagii connec- 'tio et obligatio, et erit inde juſtum judicium cum venerit con- 'tra homagium et fidelitatis ſacramentum, quod in eo in quo de- 'linquunt puniantur, ſc. in perſona domini, quod amittat domi- 'nium, et in perſona tenentis, quod amittat tenementum.' *De leg. et Conſuetud. Angl. p.* 81.

(4) The ſtate, I know, of the people of old, as deſcribed by Dr Brady, and Mr Hume, by Dr Robertſon, and a multitude of other authors, was uniformly moſt abject; and yet the power of the nobles is repreſented as moſt exorbitant. They dwell on what they term the ariſtocratical genius of the times, and ſeem to take a pleaſure in painting the abjectneſs of the people.

It is remarkable, that theſe notions are contradictory and inconſiſtent. The nobles had immence influence; but, in what did this influence conſiſt? Was it not in the numbers and the attachment of their vaſſals? Theſe were their power; and, did they oppreſs them? The reverſe is the truth. They treated them with the utmoſt lenity, and it was their intereſt to do ſo. The cordiality, accordingly, of the nobles and the vaſſals, was maintained during a long tract of time, of which the hiſtory has been repeatedly written, without the neceſſary attention to its nature and

and ſpirit. The decay, indeed, of this cordiality, was to create confuſions and oppreſſion; and, what confirms my remark, it was in this ſituation, that the power of the nobles was to be humbled.

The error I mention was firſt thrown out by a writer of ability, becauſe it ſuited the theory he inculcates. It was adopted, for the ſame reaſon, by a writer of ſtill greater talents; and nothing more is neceſſary to give currency to an abſurdity. For, the authors who do not think for themſelves, but who gain a faſhionable and temporary reputation, by giving dreſs and trappings to other men's notions, will repeat it till it is believed.

(5) Mr Hume has the following very ſingular paſſage. 'None 'of the feudal governments in Europe had ſuch inſtitutions as 'the *county-courts*, which the great authority of the conqueror 'ſtill retained from the Saxon cuſtoms. All the freeholders of 'the county, even the greateſt barons, were obliged to attend the 'ſheriffs in theſe courts, and to aſſiſt him in the adminiſtration 'of juſtice.' *Append.* 11.

In every feudal kingdom, notwithſtanding this ſtrong affirmation, the *comes* was known, and the *comitatus*. The *comitatus*, or county, was the territory or eſtate of the *comes*; and the court he held, and in which he preſided, was the *county-court*, to

to which the freeholders and feudators were called, and acted as aſſeſſors or judges. *Du Cange, and Spelman, voc. Comites.*

There might, indeed, be a *comes* who enjoyed not the property of the county, but only a part of it; and, in this caſe, he was conſtituted to exerciſe juriſdiction in it. The ſheriff originally was a very ſubordinate officer. He was ſometimes no more than the depute of the *comes*. Hence *vicecomes* was the term by which he was known. Sometimes he was only veſted with the care of the king's intereſt in particular counties. And, in reality, he began only to figure when the juriſdiction of the nobles, in the decline of fiefs, had died away to a ſhadow.

It is ſaid by Mr Hume, That the great authority of the conqueror retained the county-courts from the Saxon cuſtoms. He thus infers, that theſe courts were favourable to the royal authority. The fact, however, is exactly the reverſe. The greater juriſdiction there is in the nobles and the people, the more limited is the prerogative of princes. The county-courts were eminent and formidable ſupports of the liberty of the ſubject. And, inſtead of giving them encouragement, it was the intereſt of the conqueror to employ his great authority in their ſuppreſſion.

Mr Hume adds, in the ſpirit of a writer who had made a diſcovery, 'Perhaps this inſtitution of county-courts *in England*, 'has

'has had greater effect on the government, than has yet been di-'ſtinctly pointed out by hiſtorians, or traced by antiquaries.' *Ibid.*

I have remarked theſe and other weak places in the works of this illuſtrious man, that I might ſhow the danger of implicit confidence even in the greateſt names. The undue weight of what are called *great authorities*, gives a ſtab to the ſpirit of inquiry in all ſciences.

(6) The diſtinguiſhing freedom of the Germanic tribes was carried with them into their conqueſts. *Tacitus* ſaid of them, while they were in their woods, 'De minoribus rebus principes 'conſultant, de majoribus *omnes*.' *De Mor. Germ. c.* 11. This peculiarity of government, and this importance of the people, appear not only in the hiſtory of theſe nations, but in their laws. The prologue to the laws of the Franks has theſe words. 'Hoc decretum eſt apud regem, et principes ejus, et apud cunc-'tum *populum* Chriſtianum, qui infra regnum Merwungorum 'conſiſtunt.' *Lindenbr. p.* 399. The lex Alamannorum begins thus. 'Incipit lex Alamannorum, quae temporibus Chlotarii re-'gis una cum principibus ſuis, id ſunt, xxxiii. epiſcop's, et 'xxxiiii. ducibus, et lxxii. comitibus, vel cetero *populo* conſtituta 'eſt.' *Lindenbr. p.* 363. In the ſame ſenſe, we read of the *infinita multitudo fidelium* who appeared in the Anglo-Saxon parliaments. *Spelman's councils.* Originally, as in Germany, in

all the European ſtates, every perſon who wore a ſword had a title to go to the national aſſembly. The ſovereign could enact no new laws, and could repeal no old ones, without the conſent of the people.

But, in antient Germany, a repreſentation of the people was even practiſed on particular occaſions; and we are told by *Tacitus*, that, when Civilis declared war againſt the Romans, 'convocavit primores gentis, et *promptiſſimos vulgi*.' *Tacit. Hiſt. lib.* 4. See farther *A Diſſertation concerning the Antiquity of the Engliſh Conſtitution, part* 5. After the erection of the European ſtates, the inconveniencies ariſing from great multitudes of armed men in councils of buſineſs, diſcovered fully the advantages of *repreſentation*. And deputies made their appearance in theſe to conſult and defend the privileges and rights of the people. The exact aera of this eſtabliſhment is not known in any country of Europe. Its antiquity, however, is beyond all doubt. And the *commons* made a figure in the aſſemblies of France, termed, les champs de mars, et les champs de mai, in the cortes of Spain, and in the wittenagemots of England.

It is probable, that in France, the people were repreſented before the age of Charlemagne. That they were important in the reign of this politic and powerful prince, there are proofs, poſitive and certain. The inſtructive work of Archbiſhop Hincmar, de ordine Palatii, places this matter in a ſtrong light; and Abbé Mably, who

who copies and comments upon it, acknowledges the ſupreme power of the aſſemblies of thoſe days, ſelects examples of it, and of the interference and conſideration of the people. In fact, nothing of any moment or value, in peace or in war, or in any ſubject whatever, could be done without their approbation. 'Lex 'conſenſu populi fit, et conſtitutione regis.' *Capit. Kar. Calv. an.* 864. *ap. Baluz. tom.* 2. *p.* 177. This concluſion is ſupported by expreſs, numerous, and concurring teſtimonies of antient laws, hiſtories, and ordinances. See *Hotoman, Franco-Gallia, ch.* 10. 11. *Mably Obſervat. ſur l'Hiſt. de France, lib.* 2. *ch.* 2. *Rymer on the antiquity of parliaments*, &c.*. Theſe aſſemblies were very different from the Etats Generaux of after times, when the rights of the people were inſulted, and the legiſlative power came to reſide in the ſovereign. Yet, it is not uncommon to confound them; and, on the foundation of this error, improper concluſions have been inferred againſt the *commons* of England.

At what period the deputies of the people appeared in the

 cortes

* Mr Hume, notwithſtanding a variety of authorities which oppoſe his aſſertions, could expreſs himſelf to the following purpoſe. 'The great ſimilarity 'among all the feudal governments of Europe, is well known to every man 'that has any acquaintance with antient hiſtory; and the antiquarians of all 'foreign countries, where the queſtion was never embarraſſed by party diſputes, have allowed, that the *commons* were very late in being admitted to a 'ſhare in the legiſlative power.' *Append.* 11.

cortes of Spain, is uncertain. But the liberty of the Wiſigoths, who founded that kingdom, was ferocious; their love of independence was foſtered by the ills of the Mooriſh domination; and their ſovereigns, during a long tract of time, were kept in a ſurpriſing degree of ſubjection. Like all the other barbaric tribes who made eſtabliſhments, the individuals among the Goths who wore ſwords, aſſembled originally in the councils of the nation; and when the diſadvantages of crowded and tumultuous aſſemblies were uniformly felt, it is natural to conclude, that the deputies of the people were called to repreſent them.

From deſign, however, in the Spaniſh government, from the ravages of the Moors, or from the waſte and havock of time, no direct proofs of this repreſentation, it is ſaid, are to be found of an earlier date than the year 1133. Of the appearance of the deputies of the people, at this time, the evidence is produced by *Dr Geddes*; and this writer has alſo publiſhed the writs of ſummons, which, in the year 1390, required the city of Abula to ſend its repreſentatives to the parliament of Spain. *Miſcellaneous Tracts*, *vol.* 1. There is likewiſe evidence of a Spaniſh parliament in the year 1179, in which the deputies of the people were aſſembled; and of another in the 1210, in which they aſſi. ed as a branch of the legiſlature. *Gen. Hiſt. Spayn. ap. Whitelock*, *Notes upon the King's Writ*, *vol.* 2. *p.* 65.

While

While liberty and the deputies of the people made a figure, and while the prerogative of the ſovereign was reſtrained and directed by national councils and aſſemblies in the other countries of Europe, it ſeems the height of wildneſs to conclude, as many have done, that, in England, the inhabitants were in a ſtate of ſlavery, and that the mandate of the Prince was the law. His condition, ſo far from being deſpotic, was every moment expoſed to danger and inſult. He might be depoſed for a ſlight offence. He was elected to his office. And, his coronation-oath expreſſed his ſubjection to the community, and bound him to protect the rights of his ſubjects.

The Anglo-Saxon laws are proofs, that, inſtead of governing by his will or caprice, he was under the controul of a national aſſembly. In the preambles to them, we find, that the *wites* or *ſapientes* were a conſtituent branch of the government. The expreſſion ſeniores *ſapientes* populi mei, is a part of the prologue to the ordinations of King Ina, an. 712. And theſe *ſapientes populi*, or deputies of the people, appear in the laws of other princes of the Anglo-Saxons. *LL. Anglo-Saxon. ap. Wilkins.*

It is very remarkable, that the term *ſapientes*, as may be ſeen in Du Cange, in his explanation of it, expreſſed, in Italy, in antient times, thoſe who governed the affairs of cities and communities. When men, therefore, of this ſort are uniformly mentioned as a part of the Anglo-Saxon wittenagemots, it is impoſſible,

impoſſible, but to prejudice, not to ſee, that they muſt have acted as the *repreſentatives* of the people, and muſt have procured this diſtinction from the opinion entertained of their wiſdom or experience.

By a curious teſtimony, it is even obvious, that the word *ſapientes* muſt have meant the *commons*. In the ſupplication *del county de Devonſhire*, to Edward III. there are theſe expreſſions, 'que luy pleaſe par l'avys des prelats, countees, barons, et *auters ſages* in ceſt preſent parliament ordeiner,' &c. This ſupplication is printed in the 4. Inſt. p. 232. In the reign of the third Edward, from the *auters ſages* expreſſing the commons, it may ſurely be deciſively inferred, that *ſapientes* had the ſame meaning in older times.

In fact, the expreſſions which denote the Anglo-Saxon aſſemblies, allude to their nationality. 'Commune concilium, 'conventus omnium, concilium cleri et populi, omnium prin-'cipum et omnium ſapientum conventus,' &c. are appellations which mark forcibly the interference and aſſiſtance of the *commons* *.

In

* Mr Hume has obſerved, indeed, that 'None of the expreſſions of the antient 'hiſtorians, though ſeveral hundred paſſages might be produced, can, *without the* 'utmoſt violence, be *tortured* to a meaning which will admit the *Commons* to be con-'ſtituent members of the great council.' Append. 11. It is painful to remark a want of candour ſo glaring in ſo great a man.

In the annals of Winchelcomb, an. 811. there is to be ſeen the term *procuratores*, as expreſſive of a branch of the wittenagemot. It alſo occurs in a charter of King Athelſtane. And, that the perſons denoted by it were the deputies of the people, ſeems paſt all doubt, when it is recollected, that, in the Spaniſh writers, this order of men is expreſſed by *procuradores de las cividades y villas.* Nay, in Polydore Virgil, we meet the expreſſion *procuratores civium populique. p.* 478. *ap. Whitelocke, vol.* 1. *p.* 378.

To theſe notices I might add a multitude of authorities, reſpectable and poſitive. But I mean not now to enter fully into the diſpute concerning the importance of the people. To give completeneſs to the ſpirit of my preſent volume, it is ſufficient for me to aſſert the antiquity of the commons, in oppoſition to an opinion of their late riſe, which a modern hiſtorian, of great reputation, has inculcated, with that hardineſs which he diſplays in all his writings, but with little of that power of thought and of reaſoning which does honour to his philoſophical works.

Mr Hume, ſtruck with the talents of Dr Brady, deceived by his ability, diſpoſed to pay adulation to government, or willing to profit by a ſyſtem, formed with art, and ready for adoption, has executed his hiſtory upon the tenets of this writer. Yet, of Dr Brady it ought to be remembered, that he was the ſlave of a faction, and that he meanly proſtituted an excellent underſtanding,

ding, and admirable quickneſs, to vindicate tyranny, and to deſtroy the rights of his nation. With no leſs pertinacity, but with an air of greater candour, and with the marks of a more liberal mind, Mr Hume has employed himſelf to the ſame purpoſes; and his hiſtory, from its beginning to its concluſion, is chiefly to be regarded as a plauſible defence of prerogative. As an elegant and a ſpirited compoſition, it merits every commendation. But no friend to humanity, and to the freedom of this kingdom, will conſider his conſtitutional inquiries, with their effect on his narrative, and compare them with the antient and venerable monuments of our ſtory, without feeling a lively ſurpriſe, and a patriot indignation.

(7) The general doctrines concerning wardſhips may be ſeen in *Craig, lib.* 2. *Du Cange, voc. Cuſtos, Warda. La Coutume reformée de Normandie, par Baſnage, Art. des Gardes.*

In that inſtructive collection of records, *The hiſtory and antiquities of the exchequer of the Kings of England, by Mr Madox*, there are the following examples of the ſale of wardſhips by the crown, in the times which paſſed from Duke William to King John.

Godfrey de Cramavill gave xxv l. x s. for the cuſtody of the land of Aketon, which was Ralf de Heldebouill's, and of Ralf's heir during his nonage. Hugh de Flammavill profered x l. for

for the cuſtody of his ſiſter, with her land. Ralf de Gernemue gave a fine of lx marks, that he might have the cuſtody and donation of Philipp de Niwebote's daughter, with her inheritance. Earl David gave cc marks to have the cuſtody of Stephen de Cameis, with his whole land, till his full age; ſaving to the King the ſervice of the ſaid land; and Earl David was to make no *deſtruction* upon it. And Philip Fitz-Robert gave cc l. and c bacons and c cheeſes for the wardſhip of the land and heir of Ivo de Munby, till the heir came to be of full age. *Vol.* 1. *p.* 323. 324.

In remarking theſe ſales, the value of money in its variations, is to be attended to. From *Mr Madox*, it appears, that, 'in 'the reign of Henry III. Simon de Montfort gave ten thouſand 'marks to have the cuſtody of the lands and heir of Gilbert de 'Unfranville, until the heir's full age, with the heir's marriage, 'and with advouſons of churches, knight-fees, and other 'pertinencies and eſcheats;' and my *Lord Lyttleton* has calculated the amount of this payment, according to the preſent value of money. 'Ten thouſand marks,' he obſerves, 'containing 'then as much ſilver in weight as twenty thouſand pounds now; 'and the value of ſilver in thoſe days, being unqueſtionably 'more than five times the preſent value, this ſum was equiva-'lent to a payment of above a hundred thouſand pounds made 'to the exchequer at this time.' *Hiſt. of Henry* II. *vol.* 2. *p.* 297. *Madox*, *vol.* 1. *p.* 326.

(S) Of reliefs in England, it is ſufficient to give the following examples, as they will fully illuſtrate the oppreſſions which muſt have reſulted from the exaction of this feudal incident.

In the 5th year of King Stephen, Walter Hait gave v marks of ſilver for relief of his father's land. Alice, wife of Roger Bigot, gave c and fourſcore and xviii l. for her father's land or manour of Belvoir. Humfrey de Bohun paid xxii l. and x s for relief of his father's land. Waleran Fitz William anſwered xxxiii l. vi s. and viii d. for relief of his land. In the reign of King Henry II. William Fitz William paid xxv marks for relief of his land; Theobald de Valeines xxx l. for relief of ſix knight-fees; and Robert de Dudaville x marks for relief. In the reign of K. Richard I. Robert de Odavill's ſon paid c marks for acceptance of his homage, and for relief and ſeiſin of his land; Walter de Niewenton paid xxviii s. and iiii d. for ſeiſin of the fourth part of a knight's-fee, which was taken into the King's hands for default of paying relief. William de Novo Mercato gave c marks, *that the King would receive his reaſonable relief*, to wit, c l. In the reign of K. John, John de Venecia gave ccc marks for ſeiſin and relief, and did homage to the King, and was to make the King an *acceptable preſent* every year. Geoffrey Wake gave cc marks for his relief. *Madox, Hiſt. of the exchеq. vol.* I. *p.* 316. 317.

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The minute ſteps in the hiſtory of reliefs, and of the other feudal perquiſites, are no part of this work. The reader who would inveſtigate Engliſh reliefs ſtill farther, may conſult *LL. Guliel. LL. Hen. I. Chart. Johan. &c.* and, for their ſtate in foreign countries, he may conſider what is ſaid in *Bruſſel, uſage-general des fiefs, liv. 2. Aſſiſſes de Jeruſalem, and the Gloſſaries.*

(9) Littleton on tenures, ſect. 107. Du Cange, Diſparagare. La Coutume reformée de Normandie.

(10) Celeſtia, wife of Richard ſon of Colbern, gave xl s. that ſhe might have her children in wardſhip with their land, and that *ſhe might not be married, except to her own good-liking.* William Biſhop of Ely gave CCXX marks, that he might have the cuſtody of Stephen de Beauchamp, *and might marry him to whom he pleaſed.* William de St Marie-church gave D marks, to have the wardſhip of Robert, ſon of Robert Fitzharding, with his whole inheritance, with the knight's-fees, donations of churches, *and marriages of women thereto belonging*; and that he might marry him to one of his [William's] kinſwomen; provided, that Robert's land ſhould revert to him, when he came to full age. Bartholomew de Muleton gave C marks, to have the cuſtody of the land and heir of Lambert de Ybetoft, *and that he might marry Lambert's wife to whom he pleaſed*, but without diſparagement. Geoffrey Croſs gave XL marks, for the wardſhip of the lands and heirs of *Sampſon De Mules*, who held of

the King *in capite*, by ſerjeanty, with the *marriage* of the heirs. John Earl of Lincoln, conſtable of Cheſter, fined MMM marks, to have the marriage of Richard de Clare, for the behoof of Maud, eldeſt daughter to the ſaid Earl. Gilbert de Maiſnil gave X marks of ſilver, that the King would give him leave to take a wife. Lucia, Counteſs of Cheſter, gave D marks of ſilver, that ſhe might not be married within five years. Cecilie, wife of Hugh Pevere, gave xii l. x s. that ſhe might marry to whom ſhe pleaſed. Ralf Fitz William gave C marks fine, that he might marry Margery, late wife of Nicholas Corbet, who held of the King in chief, and that Margery might be married to him. And Alice Bertram gave xx marks, that ſhe might not be compelled to marry. *Madox, hiſt. of the Exchequer, vol.* I. *p.* 322—326. 463—466.

Theſe valuable notices are from records in the reigns of Henry II. Rich. I. King John, Henry III. and Edward I.

(11) Henry II. levied an *aid* of one mark *per fee*, for the *marriage* of his daughter Maud to the Duke of Saxony. Of this aid, the proportion of the Earl of Clare for his own knight-fees, and for thoſe of his lady the Counteſs, of the old feofment, was 'fourſcore and fourteen pounds and odd;' and for his fees of the new feofment, it was ciii s. iiii d. The feofments which had been made either to barons or knights, before the death of Henry I. were called *vetus feffamentum*. Fees of the new feofment

ment were from the acceſſion of Henry II. This appears from the Black Book of the Exchequer.

Henry III. had an *aid* of xl s. of every knight's fee to make his *eldeſt ſon* a knight. When King Richard was taken and impriſoned on his return from the holy wars, an *aid* was given for the *ranſome* of his perſon. The barons and knights paid at the rate of xx. s per fee. *Madox, hiſt. of the Excheq. vol.* 1. *p.* 572. 590. 596.

In all caſes of aids, the inferior vaſſals might be called to aſſiſt the crown vaſſals. They were even to contribute to extinguiſh their debts.

(12) Du Cange, voc. Auxilium. Bruſſel, Uſage-general des Fiefs en France. Couſt. Norman. Madox, hiſt. of the Excheq. vol. 1. p. 614—618.

(13) Spelman, voc. Felonia. Lib. Feud. Etabliſſemens de S. Louis, liv. 1. Craig, Jus Feudale, lib. 3.

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## SECTION II.

(1) IT is to be conceived, that, originally, little ceremony was employed in the duel. *Book* I. *Chap.* 2. *Sect.* 4. *and the Notes.* But, as ranks and manners improved, a thouſand peculiarities were to be invented and obſerved. This inſtitution, accordingly, is one of the moſt intricate in modern juriſprudence. It would be improper to attempt to exhauſt, in a note, a topic which would require a large volume. It is only my province to put together ſome remarks.

I begin with a diſtinction which has eſcaped many inquirers, who have thence wandered in contradiction and obſcurity. The duel was, in one view, a precaution of civil polity; in another, an inſtitution of honour. Theſe diſtinctive characters it bore in its origin. *Book* I. *Chap.* 2. *Sect.* 4. And, in theſe different reſpects, it was governed by different forms. The com non law, and the ordinary judges, directed it in the one condition; the *court of chivalry*, or the conſtitutions which gave a foundation to this court, governed it in the other. In reading what many authors have amaſſed on the duel, it is difficult to know what refers to

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the former ſtate of the matter, and what to the latter. They either knew not the diſtinction, or poſſeſſed an imperfect notion of it. Even in the reſearches of Monteſquieu, concerning the judicial combat, there is thence, perhaps, a faintneſs and embarraſſment; and, in the obſervations of Dr Robertſon, on the ſame ſubject, the confuſion is evident and palpable. See *Note* 22. *to Charles* V.

It has been affirmed, indeed, that the court of chivalry was not known till the eleventh century, or till a period ſtill later. And, it is probable, that this court, in all its formalities, and in its condition of greateſt ſplendour, exiſted not in an early age. But there is evidence, that its duties were exerciſed in very antient times. And, from an examination of the oldeſt laws of the barbarians, it is to be inferred, that the buſineſs of it, except perhaps in a few inſtances, was not determined by the common judges. We know, at leaſt, with certainty, that, in England, in the Saxon aera, before a regular court of chivalry was eſtabliſhed, points of honour and of war were under the direction of the *heretochs*, while the duel, as a civil rule, was at the direction of the common judges; and that, in the Norman age, when the court of chivalry was formally in exiſtence, with extenſive powers, the *conſtable* and the *marſhal* had ſucceeded to the juriſdiction of the heretochs. *Spelman, Gloſſ. p.* 400. *Sir Edward Coke on the court of chivalry.*

The

The determination of a doubt, for which no compleat evidence could be produced, was the end of the duel as a civil precaution. The deciſion of points of honour, and diſputes of arms, or the ſatisfaction of a proud and a wounded ſpirit, was the end of the duel, as an inſtitution of chivalry. While the common judges of the land managed the duel in the former inſtance, as an object of common law; it was governed in the latter by the judges in the court of chivalry, that is, by the conſtable and the marſhal; and the forms of procedure in theſe caſes were eſſentially different.

Of the court of chivalry, the juriſdiction regarded matters of war, precedency, and armorial diſtinctions, as well as points of honour; and treaſons, and deeds of arms committed without the realm, were objects of its cognizance. In a word, where the common law was defective, the powers of the conſtable and the marſhal were competent. 4. *Inſtitut. c.* 17.

Yet, from theſe officers, there lay an appeal to the ſovereign, as the head of arms, and he might ſtop, by his power, their proceedings. It is thence that we find the Kings of England ſuperſeding combats of chivalry. It was as the head of the civil ſtate that they could ſuperſede the combats of right, or at common law. Inſtances of their juriſdiction, in both caſes, are not unuſual. An exertion of it, in the duel of chivalry, took place in the intended combat between the Lord Rea and Mr Ramſay.

The

The Lord Rae, a Scots baron, impeached Ramſay and Meldrum for moving him beyond the ſeas, to join in the treaſons of the Marquis of Hamilton. Ramſay denied the fact, and offered to clear himſelf by combat. A court of chivalry was conſtituted, by commiſſion under the great ſeal; and the parties were on the point of engaging, when Charles I. interpoſing to prevent the duel, ſent them priſoners to the Tower. *Kennet, complete hiſtory of England, vol.* 3. *p.* 64. An interpoſition in the duel at common law, was exerciſed in an intended combat in a writ of right between the champions of Simon Low and Jo. Kine, petitioners, and of Thomas Paramore, defendant. The battle was diſcharged by Queen Elizabeth. *Spelm. Gloſſ. p.* 103.

In the duel by chivalry, champions were not uſual; becauſe queſtions of honour required the engagement of the parties. In the duels of right, the parties might have champions, becauſe the trial was merely an appeal to the Divinity, who was to decide the truth by aſſiſting, miraculouſly, the cauſe of the innocent perſon; and this aſſiſtance might be manifeſted either to himſelf or to his repreſentative. The faſhion, however, of martial times, was an inducement to the parties themſelves to engage: And, in general, champions were only proper for the old and infirm, for prieſts, minors, and women. *Du Cange, voce Campiones.*

Antiently, in the duel of right, there was a diſcretionary power in the judges to determine in what caſes it was neceſſary; and this was a proper reſtraint on the violence with which the duel was courted, in preference to other modes of trial. *Bruſſel, Uſage general des Fiefs, liv.* 3. *ch.* 13. Expreſs laws were even made to deſcribe the occaſions in which alone it was to be expedient. There is, on this head, the following regulation of Henry I. 'Non fiat bellum ſine capitali, ad minus x ſol. niſi de furto vel 'hujuſmodi nequitia compellatio ſit, vel de pace regis infracta, 'vel in illis in quibus eſt capitale mortis, vel diffamationis.' *LL. Hen.* I. *c.* 59.

In the reign of Henry II. it was the practice to permit the defendant to take his choice between the aſſiſe or jury and the duel. 'Habebit electionem,' ſays *Bracton*, 'utrum ſe ponere velit *ſuper* 'patriam, utrum culp. ſit de crimine ei impoſito, vel non: Vel 'defendendi ſe per *corpus ſuum.*' *Lib.* 3. *c.* 18. This marks the decline of the duel, and accordingly, it gradually gave way to the jury. To this alternative of being tried by one's country, which expreſſes the form of the jury, or by the duel, which expreſſes the appeal to the Divinity, there is yet an alluſion in the queſtion propoſed to a culprit, and in his anſwer. *Culprit. How wilt thou be tried?* His reply is, *By God and my country.* There is here a rule of law which has ſurvived its cauſe or neceſſity. The alternative is ſuggeſted in the queſtion, when no alternative exiſts. And the anſwer includes both trials, when one

one only is in practice. Abſurdities of this kind, for they ſurely deſerve this name, muſt be frequent in the progreſſion of juriſprudence in all nations.

The duel of chivalry loſt its legality with the fall of the court of chivalry. It left behind it, however, the modern challenge or duel, which it is diſhonourable to refuſe, and illegal to accept. The jury, which ſwallowed up the duel at common law, could here afford no remedy.

A punier, though a more uſeful relic of the honourable court of chivalry, which was once ſo high in repute, that it was in danger of incroaching on the juriſdiction of other courts, is yet familiar in the heralds who manage armories, deſcents, and funerals, and who record admiſſions to the peerage.

The decay of the manners of chivalry, was the diſtant cauſe of the fall of this court; and its immediate one was, perhaps, the jealouſy of the great powers of its judges. There has been no regular high conſtable of England ſince the 13th year of Henry VIII. And the mareſchal dwindled down into a perſonal diſtinction, or name of dignity.

In France, points of honour were originally under the cognizance of the maire of the palace; and this officer, who was to acquire the greateſt powers, appeared in times of a remote anti-

quity. *Du Cange, voc. Major Domus.* After the age of Hugh Capet, this dignity was . ppreſſed ; and out of its ruins four courts aroſe. One of theſe was the court of chivalry, or the offices of the high conſtable and marſhal. The other courts were thoſe of the high chancellor, the high treaſurer, and the great maſter of France, or the judge of the King's houſhold. For, in the æra of his grandeur, the maire of the palace had engroſſed to his juriſdiction whatever related to arms, juſtice, and finance.

(2) It has been contended, that a knight's fee conſiſted regularly of a certain number of acres. *Spelman, voc. Feodum. Camden, Introd. to the Britann. p.* 246. But the value of acres muſt have varied according to their fertility and ſituation ; and it ſeems the more probable notion, that a proportion of land, of a determined value, no matter for the quantity of the acres, was what in general conſtituted a knight's fee. The conſideration of the revenue that was neceſſary for the maintenance of a knight, and for the furniſhing of his arms, would direct the extent of the land. The will of the grantor, however, and the conſent of the receiver, might conſtitute any portion of land whatever a knight's fee, or ſubject it to the ſervice of a knight.

This is put paſt all doubt by the following remarkable paper in the Black Book of the Exchequer, which certifies Henry II. of the ſtate of the knight's fee of one of his vaſſals.

*Carta*

*Carta Willelmi, filii Roberti.*

Kariſſimo Domino ſuo H. regi Anglorum, Willelmus, filius Roberti, ſalutem. Sciatis, quod de vobis teneo feodum. 1. militis *pauperrimum*, nec alium in eo feodavi, qui vix in ſufficientia, et ſicut tenuit pater meus. Valete. *Liber Niger Scaccari, vol.* 1. *p.* 247. *Edit.* 1771.

In the records of England, there is mention alſo of the *ſmall* fees of the honour of Moreton; and it is ſuppoſed that the fees which were granted previous to the death of Henry I. were in general more extenſive than thoſe which were poſterior to it. *Madox, hiſt. of the Exch. vol.* 1. *p.* 649. In England, as well as in France, there are even frequent examples of whole manours which were held by the ſervice of one knight, and accounted as a ſingle knight's fee. *Dugdale's barouage, vol.* 2. *p.* 107. *Notes ſur les Aſſiſes de Jeruſalem, par Thaumaſſiere, p.* 252.

But, there were not only poor fees granted out by the crown. There were even grants *in capite* of the half of a knight's fee, and of other inferior portions of it. Of this the charters which follow are an inſtructive evidence.

*Carta*

*Carta* Guidonis Extranei.*

Gwido extraneus tenet de Rege Alvin delegam per ſervitium dimidii militis.

*Carta Roberti, filii Albrici.*

Domino ſuo Kariſſimo H. Regi Anglorum, Robertus, filius Albrici Camerarii, ſalutem. Sciatis, Domine, quod ego teneo de vobis feodum dimidii militis. Valete.

*Carta Willelmi Martel.*

Ego Willelmus Martel teneo in capite de rege quartam partem feodi. 1. militis in Canewic juxta Lincolniam de antiquo feſamento, unde debeo ei facere ſervitium, et nichil habeo de novo feſamento in comitatu Lincolniae. *Lib. Nig. Scaccarii, vol.* 1. *p.* 147. 217. 269.

It was chiefly the polity or the natural beneficence of princes and nobles that varied the condition of fees. At times, the fee was ſcarcely ſufficient for the ſervice required; and, on other occaſions, it was infinitely plentiful, and beyond all proportion to the

* Guy Strange.

the military purpoſe of the grant. Its value, on an average, is, however, to be calculated from records and acts of parliament. From William the Norman till King John, it was in progreſſion, a five, a ten, a fifteen, and a twenty pound land†. In King John's times, it grew to be a forty pound land; and, before the aera of the act of parliament which took away and abolithed the military part of the feudal ſyſtem, the knight's fee was computed at *L.* 200 *per annum.* Theſe things are very curious, and might lead to political reaſonings of importance. *Spelman, voc. Miles, Aſhmole on the Order of the Garter.*

(3) Baronies and earldoms could be created or made to conſiſt of any number of fees whatever. Thus, the barony of William de Albeney Brito conſiſted of thirty-three knight's fees, the barony of Earl Reginald, of two hundred and fifteen knight's fees, and a third part of a fee; and William de Melchines had a barony of eleven knight's fees. *Maaox, Baronia Anglica, p.* 91. Thus the earldom of Geofrey Fitzpeter Earl of Eſſex conſiſted of ſixty knight's fees; and that of Aubry Earl of Oxford, of thirty knight's fees. *Selden, Tit. hon. part.* 2. *ch.* 5. *ſect.* 26. Inſtances to the ſame purpoſe might be collected in the greateſt profuſion.

From

† Sir William Blackſtone ſeems to think, that the knight's fee, in the reign of the Conqueror, was ſtated at L. 20 *per annum*, which is certainly a miſtake. *Book* 2. *ch.* 5.

From facts ſo particular, it is, I conceive, to be concluded, that Sir Edward Coke is miſtaken, when he lays it down, that a barony conſiſted, in antient times, of thirteen knight's fees and a third part, and that an earldom conſiſted of twenty knight's fees. 1. *Inſtitut. p.* 69. 70. According to this way of thinking, ſome of the barons and earls whoſe names are now recited, muſt have poſſeſſed many baronies, and many earldoms; an idea which is ſurely not only ſtrange, but abſurd. The ſuppoſition that nobility is inherent in a certain and determined number of fees, which this opinion implies, is a notion, that does not correſpond with feudal principles. The nobility was given, not by the mere poſſeſſion of the fees, but by their erection into an honour by the ſovereign. Yet Sir Edward Coke had an authority for what he ſaid. It is the old treatiſe, termed the *Modus tenendi parliamentum.* This treatiſe, however, is not of ſo high a date as the Saxon times, to which it pretends; and the circumſtance of its aſſumed antiquity, with the intrinſic proofs it bears of being a fabrication in the times of Edward III. detract very much from its weight. And, in the preſent caſe, it is in oppoſition to indubitable monuments of hiſtory.

I am ſenſible, that Sir William Blackſtone has ſaid expreſsly, 'That a *certain* number of knight-fees were requiſite to make 'up a barony.' *Book.* 2. *ch.* 5. He has not, however, entered into any detail concerning this poſition. I ſhould, therefore, imagine, that he has relied implicitly on the authority of Sir Edward

Edward Coke, which ought not, perhaps, to be eſteemed too highly in queſtions which have a connection with the feudal inſtitutions *.

Nor is it in England only that examples can be produced to refute this notion about the conſtitution of baronies and earldoms. In Normandy, five knight's fees might form a barony; and of this the following teſtimonies are an authentic proof. 1. X x 'Ricardus

* That Lord Coke had neglected too much the feudal cuſtoms, was a matter of lamentation to Sir Henry Spelman. It is with a reference to them, that Sir Henry thus ſpeaks. 'I do marvel many times, that my Lord Coke, adorning our law with ſo many flowers of antiquity and foreign learning, hath not, (as I ſuppoſe), turned aſide into this field, from whence ſo many roots of our law have, of old, been taken and tranſplanted. I wiſh ſome worthy lawyer would read them diligently, and ſhow the ſeveral heads from whence thoſe of ours are taken. They beyond the ſeas are not only diligent, but very curious in this kind; but we are all for profit and *lucrando pane*, taking what we find at market, without inquiring whence it came.' *Reliq. Spelman, p. 99.*

The neglect which produced this complaint, and drew this wiſh from this learned knight, is ſtill prevalent. The law in Great Britain is no where ſtudied in its hiſtory, and as a ſcience. The ſtudent is ſolicitous only to ſtore his memory with caſes and reports; and courts of juſtice pay more regard to authorities than to reaſonings. From the moment that the Dictionary of Deciſions was publiſhed in Scotland, the knowledge of the Scottiſh law has declined. Yet the reſpectable author of that compilation did not ſurely imagine that he was about to do a prejudice to his nation.

'Ricardus de Harcourt tenet honorem S. Salvatoris de domino 'rege per ſervitium 4 militum: Sed debebat quinque, quando 'baronia erat integra.' 2. 'Guillelmus de Hommet conſtabula-'rius Normanniae tenet de domino rege honorem de Hommetto 'per ſervitium 5 militum, et habet in eadem baronia 22 feoda 'militum ad ſervitium ſuum proprium.' *Regeſtrum Philip. Aug. Herouvallianum, ap. Du Cange, voc. Baronia.*

(4) The terms *knight* and *chivaler* denoted both the knight of *honour* and the knight of *tenure*; and *chivalry* was uſed to expreſs both *knighthood* and *knight-ſervice*. Hence, it has proceeded, that theſe perſons and theſe ſtates have been confounded. Yet the marks of their difference are ſo ſtrong and pointed, that one muſt wonder that writers ſhould miſtake them. It is not, however, mean and common compilers only who have been deceived. Sir Edward Coke, notwithſtanding his diſtinguiſhing head, is of this number. When eſtimating the value of the knight's fee at L. 20 *per annum*, he appeals to the ſtatute *de militibus, an.* 1. *Ed.* II. and, by the ſenſe of his illuſtration, he conceives, that the knights alluded to there, were the ſame with the poſſeſſors of knight's fees; and they, no doubt, had knight's fees; but a knight's fee might be enjoyed not only by the tenants *in capite* of the crown, but by the tenants of a vaſſal, or by the tenants of a ſub-vaſſal. Now, to theſe the ſtatute makes no alluſion. It did not mean to annex knighthood to every land-holder in the kingdom who had a knight's fee; but to encourage

courage arms, by requiring the tenants *in capite* of the crown to take to them the dignity. He thus confounds *knighthood* and the *knight's fee*. *Coke on Littleton*, *p.* 69.

If I am not deceived, Sir William Blackſtone has fallen into the ſame miſtake, and has added to it. Speaking of *the knights of honour*, or the *equites aurati*, from the gilt ſpurs they wore, he thus expreſſes himſelf. 'They are alſo called, in our law, 'milites, becauſe they formed a part, or, indeed, *the whole of* 'the royal army, in virtue of their feodal tenures; one condition 'of which was, that *every one who held a knight's fee* (which, 'in Henry the Second's time, amounted to L. 20 *per annum*), 'was obliged to be knighted, and attend the king in his wars, 'or fine for his non-compliance. The exertion of this prero-'gative, as an expedient to raiſe money, in the reign of 'Charles I. gave great offence, though warranted by law and 'the recent example of Queen Elizabeth: But it was, at the 'Reſtoration, together with all other military branches of the 'feodal law, aboliſhed; and this kind of knighthood has, ſince 'that time, fallen into great diſrepute.' *Book.* 1. *ch.* 12.

After what I have juſt ſaid, and what is laid down in the text, I need hardly obſerve, that this learned and able writer has confounded the knight of *honour* and the knight of *tenure*. And, that the requiſition to take knighthood, was not made to *every*

poſſeſſor of a knight's fee, but to the tenants of knight's fees held *in capite* of the crown, who had merely a ſufficiency to maintain the dignity, and were thence diſpoſed not to take it. See farther *the notes to chapter* IV. The idea that the whole force of the royal army conſiſted of *knights of honour*, or *dubbed knights*, is ſo extraordinary a circumſtance, that it might have ſhown, of itſelf, to this eminent writer, the ſource of his error. Had every ſoldier in the feudal army received the inveſtiture of arms? Could he wear a ſeal, ſurpaſs in ſilk and dreſs, uſe enſigns-armorial, and enjoy all the other privileges of knighthood? But, while I hazard theſe remarks, my reader will obſerve, that, it is with the greateſt deference I diſſent from Sir William Blackſtone, whoſe abilities are the object of a moſt general and deſerved admiration.

In this note, and, perhaps, in other places of this volume, I uſe the expreſſion 'tenant *in capite* of the crown,' which may ſeem a tautology to many. The phraſe, 'a tenant *in capite*,' may, indeed, expreſs ſufficiently the royal vaſſal. It may, however, expreſs a tenant *in capite* of a ſubject. And this diſtinction was not unknown in the law of England. *Madox, Bar. Angl. p.* 166. *Spelm. Gloſſ. voc. Caput.*

(5) It is natural to think, that the number of tenants *in capite* who gave no infeudations, could not be great. The following curious records of the age of Henry II. are proofs, however, that tenants

tenants *in capite*, who gave no infeudations, did actually exiſt; and, perhaps, they ſhow, by implication, their uncommonneſs.

*Carta Albani de Hairun.*

Domino ſuo excellentiſſimo H. Regi Anglorum, Albanus de Hairun. Veſtrae excellentiae notifico, quod ego in Hertfordſcire feodum. 1. militis de veteri fefamento de vobis principaliter teneo, et quod de novo fefamento nichil habeo, nec militem feofatum aliquem habeo. Valete.

*Carta Mathaei de Gerardi Villa.*

Mathaeus de Gerardi Villa tenet in capite de Domino Rege feodum. 1. militis de veteri fefamento, et nullum habet militem fefatum, nec habet aliquid de novo. *Liber Niger Scaccarii*, *p.* 246. 247.

In the ſame inſtructive monument, there are other examples of grants *in capite* of ſingle fees; and, in general, it is to be inferred, that, of ſuch grants, there were ſub-infeudations. *p.* 129. 130. 179.

CHAP-

## CHAPTER II.

(1) LIB. Feud. lib. 1. tit. 1. Craig, Jus feudale, lib. 1. Spelman. voc. Feodum.

(2) An inſtance of the ſovereign ſelecting the ſon the moſt agreeable to him, for enjoying the eſtate, occurs in England ſo late as the reign of Henry II. This prince gave ſeiſine to Ralf de Mandevill of the barony of Merſwude, becauſe he was *a better knight* than his elder brother Robert de Mandevill. *Madox, Baron. Angl. p.* 97.

It is remarkable, that, among the German nations, ſimilar principles, even in the days of *Tacitus*, had an influence on the rights of ſucceſſion. 'Inter familiam, et penates, et jura ſucceſſio-'num, equi traduntur, excipit filius, non ut cetera maximus na-'tu, ſed prout *ferox bello et melior*.' *De Mor. Germ. c.* 32.

A ſingular conſequence of theſe uſages made its appearance in the law of England. On the devolution of a peerage to heirs

heirs female, the King might ſelect the fortunate daughter on whom to beſtow it. This privilege, beautiful and intereſting, was to grow out of martial cuſtoms.

(3) *Beneficium*, and *beneficia*, are frequently mentioned in the laws of the barbarians, and, from the deſcription given of them, it is evident, that they were ſubject to *military* ſervice. A law of the Longobards has this paſſage. ‘ Per multas interpella-
‘ tiones factas ad nos didicimus, *milites beneficia ſua* paſſim diſ-
‘ trahere.’ *LL. Longob. lib.* 3. *tit.* 9. *l.* 9. *ap. Lindenbrog.* Antient charters allude to their ſervice, by calling them ‘ *beneficia*
‘ *militaria.*’ *Du Cange*, *voc. Beneficium.* See alſo a capitulary, an. 807. It is likewiſe to be obſerved, that *vaſſalli*, a feudal term, denoted, in early times, the poſſeſſors of benefices. Of this there are proofs in the years 757, and 807. *Du Cange*, *voc. Vaſſalli.*

It is commonly thought, that the word *feudum* was not known till about the year 884, when there is certain evidence of its uſe. Now, this period was, in ſome countries, poſterior to the perpetuity of the fief, and thus *beneficium* and *feudum* were to expreſs the ſame thing. In fact, in a conſtitution of the Emperor Charles III. who died in the 888, *beneficium* and *feudum* are employed alternately in expreſſing a hereditary grant. In the year 1162, there is a charter by the Emperor Frederic I. to Raimond his nephew, giving him the perpetual grant of a county; and, in this charter,

charter, the words *beneficium* and *feudum* are alſo uſed alike to expreſs the donation. *Bruſſel, Uſage general des fiefs, p.* 72. 78. Even in the books of the fiefs, theſe terms are employed promiſcuouſly in the ſame ſenſe.

(4) *Chantereau le Fevre* contends, that, under the Kings of France of the firſt and ſecond race, there were only two kinds of landed property, the *domains* of the Prince, and *allodiality*. This notion, which is the foundation of his ſyſtem, obliges him to aſſert, that *benefices* were *allodium*. Inferior writers have followed his fancy. For all ingenious men draw after them a train of book-makers, who are more ſolicitous to defend their opinions, than to underſtand them.

That *benefices* were not *propriety* or *allodium*, has been juſt now ſaid. But it may not be improper to produce expreſs proofs of their diſtinction. The following laws will ſerve this purpoſe.

'Auditum habemus qualiter et comites et alii homines, qui 'noſtra *beneficia* habere videntur, comparant ſibi *proprietates* de 'ipſo *noſtro beneficio*, et faciunt ſervire ad ipſas *proprietates* ſer- 'vientes noſtros de eorum *beneficio*, et curtes noſtrae remanent 'deſertae, et in aliquibus locis ipſi vicinantes multa mala pati- 'untur.' *Capit. Kar. et Lud. lib.* 3. *tit.* 19.

'Audivimus, quod aliqui reddant *beneficium noſtrum* ad a-'lios homines in *proprietatem*, et in ipſo placito dato pretio 'comparant ipſas res iterum ſibi *in alodem* ; quod omnino caven-'dum eſt ; quia qui hoc faciunt, non bene cuſtodiunt *fidem*, 'quam *nobis promiſſam habent*. Et ne forte in aliqua *infidelitate* 'inveniantur, qui hoc faciunt, deinceps caveant ſe omnino a 'talibus, ne a propriis *honoribus*, a poprio ſolo, a Dei gratia et 'noſtra, extorres fiant.' *Capit. Kar. et Lud. lib.* 3. *tit.* 20. *ap. Lindenbrog. p.* 877.

The reader may alſo conſult and compare what is collected in *Du Cange*, under *Alodis* and *Beneficium*.

(5) See Chapter 1. and the Notes to it.

(6) Spelman, Littleton, Coke, Houard, Madox, Dalrymple, Blackſtone, the Judges of Ireland in the caſe of Tenures upon the commiſſion of defective titles, &c.

In the elaborate treatiſe on feuds and tenures by Sir Henry Spelman, his whole argument to ſhow that hereditary fiefs were unknown to the Anglo-Saxons, or at leaſt the great weight of it, reſts on the idea, that the feudal incidents were conſequences of the *perpetuity* of the fief. Yet it is obſervable, that this poſition is conſtantly ſuppoſed, and never proved. He no where evinces, that wardſhip, marriage, relief, aid, and eſcheat, were neceſſary

neceſſary and certain reſults of the fief, in its condition of perpetuity; and, in the courſe of this work, if I do not flatter myſelf, I have produced evidence, from which it is to be concluded, in the cleareſt manner, that the feudal incidents were the attendants of the fief in all the ſteps of its progreſs.

On a foundation of mere froth, this diſtinguiſhed antiquary has erected a ſuperſtructure that is without ſolidity, and which the ſlighteſt effort may overthrow. Yet it is reſorted to as an impregnable caſtle; and here, vainly ſecure, many a combatant has thrown down the gauntlet of defiance. If authors were not generally the unthinking copiſts of each other, it might provoke laughter to conſider the gravity with which an opinion is held out as irrefragable, that is in a high degree groſs with abſurdity, and feeble with weakneſs.

(7) Capitul. Reg. Franc. an. 877. ap. Baluz. tom. 2. p. 269. Abbé Mably, Obſervat. ſur l'hiſtoire de France, liv. 2.

(8) Du Cange, voc. Militia.

(9) Madox, Bar. Angl. p. 28. 277. 278. Houard, Anciennes loix des François, conſervées dans les coutumes Angloiſes, recueillies par Littleton, diſcours preliminaire. Craig, Jus feud. Somner, Treatiſe of Gavelkind. Spelm. Gloſſ. Hume, Hiſt. of England, vol. 1. Hale, Hiſt. of the com. law.

(10) Sir Ed. Coke. The Judges of Ireland in the caſe of tenures. Selden, in his titles of honour. Bacon, Diſcourſe on the laws and government of England, &c.

(11) The uſe of entails, which was not unknown in the Anglo-Saxon times, and the ſucceſſion which obtained in allodial eſtates, muſt have contributed very much to the eſtabliſhment of the perpetuity of the fief. *LL. Ælfredi, ap. Wilkins.* The general tendency of the fief to this ultimate ſtep, and the immenſe power of many of the Anglo-Saxon nobles, ſeem alſo to confirm the idea, that the exiſtence of its perpetuity might, in ſome caſes, be known in the Anglo-Saxon times. But preſumptive arguments, though of great weight, are not to be entirely relied upon in queſtions of this ſort.

There is actual evidence, that Ethelred poſſeſſed, as an hereditary fief and earldom, the territority which had conſtituted the kingdom of Mercland. He had this grant from King Alfred, when he married his daughter Ethelfleda. *Selden, Tit. hon. part* 2. *ch.* 5. It is teſtified out of records, that the earldom of Leiceſter was an inheritance in the days of Æthelbald; and the regular ſucceſſion of its earls, for a long period, is to be pointed out. *Camden, Britannia by Gibſon, vol.* 1. *p* 542. It is known from old hiſtorians of credit, that Deireland and Bernicia were Saxon earldoms, which were not only feudal, but inheritable. *Tit. hon. part* 2. *ch.* 5.

The

The grant of Cumberland by King Edmund to Malcolm King of Scotland, was alſo feudal and inheritable; and this appears from the Saxon chronicle, and from the following verſion of the terms employed in it. 'Eadmundus Rex totam Cumberland 'praedavit et contrivit, et *commendavit* eam Malcolmo Regi Sco-'tiae, hoc pacto quod *in auxilio* ſibi foret terra et mari.' *H. Huntindon, ap. Praefat. Epiſc. Derrenſ ad LL. Anglo-Sax. p.* 7. The expreſſion *commendare*, indeed, is ſaid by Spelman not to mean a feudal homage. *Feuds* and *tenures*, *p.* 35. But the original Saxon evinces this ſenſe; and, in fact, the word *commendare*, notwithſtanding the authority of this learned gloſſographer, is uſed with the utmoſt propriety to expreſs a feudal homage. *Commendare ſe alicui*, was even the marked expreſſion for *faire l'hommage à un ſuſerain.* See *Du Cange*, *voc. Commendare et Bruſſel, Uſage-general des fiefs*, *p.* 35. 276.

(12) 'Volumus etiam, ac firmiter praecipimus et concedimus, 'ut omnes liberi homines totius monarchiae regni noſtri praedicti, 'habeant et teneant terras ſuas, et poſſeſſiones ſuas bene, et in 'pace, libere ab omni *exactione injuſta*, et ab *omni tallagio*, ita 'quod nihil ab eis exigatur vel capiatur, niſi ſervitium ſuum li-'berum, quod de jure nobis facere debent, et facere tenentur; 'et prout ſtatutum eſt eis, et illis a nobis datum et conceſſum, 'jure haereditario in perpetuum per commune conſilium totius 'regni noſtri praedicti.' *LL. Guliel. c.* 55.

It.

It is to be mentioned here as ſomewhat remarkable, that the laws of Duke William, and eſpecially thoſe of them which relate to the feudal inſtitutions, are repreſented by many foreign writers, and by our domeſtic advocates for tyranny, as the mandates or ordinances of a prince who governed by the ſword. Yet they were parliamentary acts, and bear this honourable teſtimony in their boſom.

(13) LL. Edward. Reg. ap. Wilkins, p. 197. Chart. Guil. de leg. Edw. Regis ap. Spelm. Cod. Leg. vet. p. 290.

(14) Spelm. Cod. Leg. vet. ap. Wilkins, p. 295. 296.

(15) LL. Henry I. ap. Wilkins, p. 233. et ſeq.

(16) Chart. Steph. Reg. de libertatibus, ap. Spelm. Cod. Leg. vet.

'Sciatis me conceſſiſſe, et praeſenti charta mea confirmaſſe, 'omnibus baronibus et hominibus meis de Anglia omnes *liber-* '*tates* et *bonas leges* quas Henricus Rex Angliae avunculus meus 'eis dedit et conceſſit, et omnes *bonas leges* et *bonas conſuetudines* 'eis concedo quas habuerunt tempore Regis *Edwardi*.' *p.* 310.

(17)

(17) Charta libertatum Angliae Regis Henrici II. ap. Spelm. Cod. p. 318.

(18) Magna Charta Regis Johannis de libertatibus Angliae, ap Spelm. Cod. p. 367. et ſeq.

Many important clauſes of the great charter relate to the feudal ſeverities. And, it is worthy of notice, that, from the ſlight conſideration of theſe ſeverities, it has proceeded, that ſo many writers have deſcribed the feudal inſtitutions as a ſyſtem intended and formed for oppreſſion. Yet I have clearly ſhown, that theſe ſeverities grew out of theſe inſtitutions from the change of manners; and that the ſcheme of benefices or fiefs was not only conſiſtent with liberty, but founded in it.

(19) Hume, Hiſt. of England, vol. 1. p. 185.

(20) There are laws which bear the name of Edward; but it is acknowledged, on every hand, that their authority is not to be fully truſted. And, in the queſtion treated, they are not of any uſe, unleſs it be, perhaps, that they illuſtrate the exiſtence of fiefs among the Anglo-Saxons. This compilation, however, though poſterior to the age of the Confeſſor, deſerves to be examined with more attention than has hitherto been beſtowed upon it. M. Houard, a foreign lawyer, whoſe acquaintance with

Norman

Norman cuſtoms is more intimate than with thoſe of the Anglo-Saxons, is the lateſt writer who ſeems to have made a ſtudy of it.

(21) The following very curious law of William the Norman makes expreſs mention of the *knight's fee* and *knight-ſervice*. It does more. It alludes to a prior law which actually eſtabliſhed this tenure, and which was the act of William and his parliament. It is, of conſequence, a deciſive proof of the introduction of the *knight's fee*, or of *knight-ſervice*, by this prince, and of this only.

'Statuimus etiam et firmiter praecipimus, ut omnes comites, 'et barones, et milites, et ſervientes, et univerſi liberi homines 'totius regni noſtri praedicti, habeant et teneant ſe ſemper bene 'in *armis*, et in *equis*, ut decet et oportet, et quod ſint ſemper 'prompti et bene parati ad *ſervitium ſuum integrum* nobis ex-'plendum, et peragendum, cum ſemper opus adfuerit, ſecun-'dum quod NOBIS debent de *feodis et tenementis ſuis* de jure fa-'cere, et ſicut illis ſtatuimus per *commune conſilium* totius regni 'noſtri praedicti, et illis dedimus et conceſſimus in feodo jure 'hacreditario.' *LL. Guill. c.* 58.

(22) 'Terras militibus ita diſtribuit, et eorum ordines ita diſ-'poſuit, ut Angliae regnum lx millia militum indeſinenter ha-'beret,

'beret, ac ad imperium regis, prout ratio popoſcerit, celeriter ex-'hiberet.' *Ord. Vit. lib.* 4.

Sprott, the monk of Canterbury, makes the knight-fees to amount to 60,215, and of theſe he relates, that 28,115 were in the hands of the clergy. Some writers have made Domſday-book agree with Ordericus Vitalis, as to the number of knight's fees. But they produce not, ſo far as I have obſerved, the paſſage or paſſages of that monument, which illuſtrate this opinion. And, it is difficult to conceive, that it can give a complete ſatisfaction on this head or topic.

(23) Selden, Tit. hon. part 2. ch. 5. ſect. 17. Madox, Baron. Anglica, p. 30.

(24) Coke, 1. Inſtitute, ſect. 1.

# CHAPTER III.

## SECTION I.

(1) THE military plan of the feudal inſtitutions, or an idea of the militia created by fiefs, may be ſeen to the greateſt advantage in that curious monument, 'the Black 'Book of the Exchequer;' of which it was the object to exhibit, not only a liſt of the feudal tenants, but of the fees and knights held and provided by them. An article from it, therefore, while it may employ the reflections of the reader, will illuſtrate the general notion inculcated in the text.

*Carta Gervaſii Paganelli.*

Domino ſuo dilectiſſimo Henrico, Regi Angliae et Duci Normanniae et Aquitaniae, et Comiti Andegaviae, Gervaſius Paganellus ſalutem.

Iſti ſunt milites, de quibus vobis debeo ſervitium.

Petrus de Bremingeham tenet feod. IX. militum.
Giffardus di Tiringeham feod. trium militum.
Henricus de Mohun feodum. I. militis.
Ricardus Engaine feodum. I. militis.
Robertus de Caſtreton feodum. I. militis.
Paganus de Embreton feodum. I. militis.
Manifelinus de Ovunges feod. duorum militum.
Petrus de Stamford feodum. I. militis.
Willelmus de Jetingeden feodum. I. militis.
Elias de Englefeld feod. III. militum.
Ricardus de Ditton feod. IIII. militum.
Philipus de Hamton feod. II. militum.
Willelmus de Abbenwrthe feodum. I. militis.
Willelmus, filius Widonis, feod. III. militum.
Bernardus de Frankelege feod. IIII. militum.
Gervaſius de Berneke feod. IIII. militum.
Willelmus de Bello campo feod. II. militum.
Willelmus de Haggaleg feod. I. m.
Milo de Ringeſton feodum. I. militis et dimid.
Willelmus Buffare feod. II. militum et dim.
Robertus de Eſtingeton feod. I. militis.
Henricus de Oilli tenebat feodum. I. militis.

Haec

Haec eſt ſumma militum, de quibus Anteceſſores mei Anteceſſoribus veſtris fecerunt ſervitium, et ego, veſtri gratia, vobis, ſcilicet. L.

Et iſti ſunt milites, quibus pater meus et ego dedimus terram de dominio noſtro poſt mortem Henrici, avi veſtri, ſcilicet,

Henricus de Erdinton feodum. I. militis.
Radulfus Manſel feodum. I. militis.
Willelmus Paganellus feodum. I. militis.
Michael filius Oſberti et Willelmus de Lovent. feodum dimidii militis.
Godwinus Dapifer tertiam partem. I. militis.
Walterus Manſel feodum. I. militis.
Petrus de Surcomunt feodum dimidii militis.
Galfridus de Rivilli tertiam partem. I. militis.

*Liber Niger Scaccarii, vol.* I. *p.* 139. 140.

It is in this form that other vaſſals of the crown certify, in this work, the ſervices and the knights they were to furniſh.

(2) It was enacted by a law of Henry II. ‘ Ut quicunque habet feodum unius militis, habeat loricam, et caſſidem, et clypeum, et lanceam.’ *Hoveden, an.* 1181. The variations in the nature of the arms to be provided, at different periods, by vaſſals

vaſſals and ſoldiers, are learnedly explained in an author whom the adorers of tyranny affect to deſpiſe, in the manly and ſpirited work of Nathaniel Bacon, on the laws and government of England.

(3) 'In univerſum aeſtimanti plus penes peditem roboris.' *Tacit. de Mor. Germ. c.* 6.

(4) Many writers have obſerved, that it was William the Norman who introduced archers into England. But they were known in the Anglo-Saxon armies. A law of Alfred has theſe words, 'Si quis alteri digitum unde ſagittatur abſciderit, xv 'ſol. comp.' See *LL. Alfr. c.* 40. as interpreted by *Lindenbrogius, in his Gloſſary, p.* 1389. Archery was alſo of high antiquity in the other ſtates of Europe. See *LL. Sal. tit.* 31. *l.* 6. *LL. Ripuar. tit.* 5. *l.* 7. The Engliſh were to excel all nations in the uſe of the bow, and for far ſhooting. It was the archers who gained the battles of Creſſy, Poictiers, and Agincourt.

'King Edwarde the third,' ſays *Aſcham*, 'at the battaile of 'Creſſie, againſt Philip the French King, as Gaguinus the French 'hiſtoriographer plainlye doth tell, ſlewe that day all the nobili-'tye of Fraunce onlye with his archers.

'Such like battaile alſo fought the noble Prince Edwarde beſide 'Poictiers, where Johne the French Kinge, with his ſonne, and 'in

'in a manner all the peres of Fraunce, were taken, beſides thirty 'thouſand which that daye were ſlaine, and very few Engliſh 'men, by reaſon of theyr bowes.

'Kinge Henrye the Fifte, a prince pereleſſe, and moſt victori-'ous conquerour of all that ever dyed yet in this parte of the 'worlde, at the battle of Agincourt, with ſeven thouſand fight-'inge men, and yet many of them ſicke, being ſuche archers, 'as the chronicle ſayth, that moſt parte of them drewe a yarde, 'ſlewe all the chivalrye of Fraunce, to the number of forty thou-'ſand and mo, and loſt not paſt twenty-ſix Engliſhmen.' *Toxophilus, or the Schole of Shootinge, p.* 112.

(5) 'He,' ſays *Littleton*, 'which holdeth by the ſervice of 'one knight's fee, ought to be with the King forety dayes, well 'and conveniently arrayed for the warre.' *Tenures, book* 2. *ch.* 3. See farther *Du Cange, voc. Feudum militare. Spelman, voc. Feudum Hauberticum, et Aſſiſes de Jeruſalem, avec des notes, par Thaumaſſiere, p.* 266.

(6) Bruſſel, Uſage-general des fiefs, vol. 1. p. 164. 168. Daniel, hiſt. de la milice Françoiſe, liv. 3.

In England, in the time of Edward III. his army in France, Normandy, and before Calais, beſides the Lords, conſiſted of 31294 combatants and attendants; and their pay for one year and

and 131 days amounted to 127201 l. 2 s. 9 d. The following ſpecification of particulars will furniſh an idea of the military pay and ſervice of thoſe times.

'To Edward Prince of Wales, being in the King's ſervice in 'Normandy, France, and before Calais, with his retinue, for 'his wages of war, 20 s. a day. Eleven banerets, every one 'taking 4 s. a day. 102 knights, each 2 s. a day. 264 eſcuires, 'each 12 d. a day. 384 archers on horſeback, each 6 d. a day. '69 foot archers, each 3 d. a day. 513 Welſhmen, whereof 'one chaplain at 6 d. a day. One phyſician, one herald or cryer, '5 enſignes, 25 ſerjeants or officers over 20 men, each 4 d. a 'day. 480 footmen, each 2 d. a day.

'To Henry Earle of Lancaſter, being in the King's ſervice 'before Calais, with his retinue, for his wages of war, and one 'other Earle, each 6 s. 8 d. a day. Eleven banerets, each 4 s 'a day. 193 knights, each 2 s. a day. 512 eſcuires, each 12 d. 'a day. 46 men at armes, and 612 archers on horſeback, each '6 d. a day.

'To William Bohun, Earle of Northampton, being in the 'King's ſervice in Normandy, France, and before Calais, 2 ba- 'nerets, 46 knights, 112 eſcuires, 141 archers on horſeback. 'For their wages as above.

'To

'To Thomas Hatfield biſhop of Durham, 6 s. 8 d. a day. 3 'banerets, 48 knights, 164 eſcuires, 81 archers on horſeback, 'every one taking as above.

'To Ralf Baron of Stafford, being in the King's ſervice in 'the places aforeſaid, with 2 banerets, 20 knights, 92 eſcuires, '90 archers on horſeback. Every one taking as above.'

Theſe things appear in a contemporary record, publiſhed by *Dr Brady* in his hiſtory of England. See *vol.* 2. *Appendix*, *p.* 88.

## SECTION II.

(1) IN rolls of the militia of France in the year 1236, and preceding that period, which were obſerved by *Pere Daniel*, there were entered military tenants who were marked down for the ſervice of 5 days, and for other proportions of the ordinary ſervice of forty days. And theſe are proofs, not only of fees in France, but of the fractions of fees. *Milice Françoiſe*, *p.* 55.

This learned author, indeed, not attending to the regulations which made the fractions of a fee give their proportion of the ordinary ſervice, has endeavoured to account for the limited number of days which many tenants were bound to ſerve, by refined reaſonings and conjectures; which ſhow how acutely, and yet how abſurdly, a man of ability may employ himſelf in ſearching out the truth *.

*Littleton*,

* ‘ Pour ce qui eſt de ceux que l'on voit dans les roles n'être obligez qu'à cinq, ‘ qu'a quinze, ou vingt cinq jours, ce furent des conceſſions particulieres, dont il ‘ eſt difficile de conjecturer la cauſe; ce fut pour quelque ſervice ſignalé rendu a l'etat,

*Littleton*, having remarked that the ordinary ſervice of the knight's fee was forty days, is careful to add, 'that he, which 'holdeth his land by the moitie of a knight's fee, ought to be

 'with

'l'etat, ou peut-être que leurs ancêtres durant les guerres civiles ſoumirent au 'Roi leurs châteaux, ou leurs terres à cette condition, ou qu'ils avoient quelque 'autre obligation qui ſupléoit au ſervice ordinaire; comme, par exemple, de 'faire la garde en certains lieux lorſque l'ennemi approchoit. On voit en effet 'dans ces roles quelques gentilſhommes fieffez, obligez ſeulement à faire le guet 'en certaines occaſions dans quelques forteresſes.

'Une autre raiſon peut avoir contribué à la reduction du ſervice à un terme 'plus court qu'il n'etoit autrefois: C'eſt que ſous la premiere race, et fort avant 'ſous la ſeconde, l'empire François etoit beaucoup plus étendu que ſous la troi-'ſieme. Il falloit aller chercher les ennemis et les rebelles dans la Germanie, et au 'delà; il falloit paſſer les Alpes, ou les Pyrenées, et entrer bien avant en Italie et 'en Eſpagne: Par conſequent les expeditions duroient beaucoup plus long-tems 'que ſous la troiſieme race, ſous la quelle le royaume avoit des bornes beaucoup 'plus étroites.' *Liv.* 3. *ch.* 2.

The wildneſs of theſe conjectures does not require to be pointed out minutely, as it will appear from a compariſon of the text with this note. Yet I cenſure not the abilities of this hiſtorian. If we could reach the truth in all ſciences, we ſhould find, that it is the greateſt men who have wandered oftenеſt. The philoſopher, who ſtates ſentiments of his own, muſt neceſſarily be miſtaken at times, and is often to reaſon hypothetically. The author who would catch the general ſenſe and opinions of the world, has no title to travel out of the right path; and, if his errors are frequent, he deſerves to be contemptible. It is not ſo with the wanderings of the inventive and reflecting mind. Though they merit not approbation, they call for reſpect. The abſurdities of the profound are the reſults of thought and of courage; thoſe of the ſhallow are the fruits of mere weakneſs.

'with the King twenty days; and that he which holdeth his 'land by the fourth part of a knight's fee, ought to be with the 'King ten days; and so he that hath more, more; and he 'that hath lesse, lesse.' *Tenures*, *p.* 69.

In a roll, *de l'ost de Foix*, in the year 1272, there are the following explicit proofs of the fractions of fees, and of the limited service that was to be given for them.

Gaufridus de Baudreville, praesentavit servitium suum per xx dies pro dimidio feodo.

Johannes Morant dicit, quod debet servitium quarti unius militis.

Johannes de Falesia Scutifer dicit, quod tenet dimidium feodum loricae, pro quo debet, sicut dicit, auxilium exercitus et calvacatae quando per Normanniam levatur, aut servitium per xx dies eundo et redeundo; et si servitium dictorum xx dierum captum fuerit, auxilium praedictum non debet capi nec levari. *See Brussel, Usage-general des fiefs*, *p.* 174.

In England, the fractions of fiefs are to be proved by almost every article in the *Black Book of the Exchequer*, and by a multitude of records in *Madox*; and to these authorities I refer the inquisitive reader.

(2) Du

(2) Du Cange, voc. Membrum Loricae. Craig Jus Feudale, lib. 1. Aſſiſes de Jeruſalem, avec des Notes, par Thaumaſſiere, p. 104.

(3) Cowel, Interpreter, voc. Fee Ferm. Spelman, voc. Feodi Firma. Du Cange, voc. Feudi Firma.

(4) See what is ſaid by *Mr Baron Dalrymple*, in the maſterly ſketch he has given of the hiſtory of the alienation of land, in his comprehenſive and learned treatiſe concerning feudal property in Great Britain.

(5) Littleton, Tenures, ſect. 96. Daniel, Hiſt. de la milice Françoiſe, liv. 3.

(6) In the ſtrictneſs of the feudal regulations, the eſtate of the vaſſal might be forfeited for his neglect of ſervice. But, in general, it ſeemed equitable, that a fine only ſhould puniſh his diſobedience. *Bruſſel, tome* 1. *Aſſiſes de Jeruſalem, avec des notes par Thaumaſſiere, p.* 267. *Etabliſſemens de S. Louis, liv.* 1.

In England, in the Anglo-Saxon times, the forfeiture of the benefice or a fine, as in the other countries of Europe, was the puniſhment of the refractory vaſſal. The caſe was the ſame in the Norman period of our hiſtory. When the King's ſummons

*ad*

*ad habendum ſervitium*, was iſſued, it was expected that it would be complied with. The following fines and forfeitures for neglect of ſervice are from records.

'The Abbot of Perſhore was amerced, for not ſending his 'knights to ſerve in the army of Camarun, as he was warned to 'do. William de Haſtinges fined in c marks, that he might 'have the king's favour, becauſe he did not march at the king's 'ſummonce in the army of Normandy. William, biſhop of 'Wincheſter, fined, or was amerced, in c marks, becauſe he was 'not in the army of Gannok, nor had his ſervice there. Mat-'thew Turpin was diſſeiſed of his land and ſerjeanty in Winter-'law, becauſe he was not in the king's ſervice beyond ſea. Dun-'can de Laſcels was diſſeiſed of three knight's fees and a half, 'becauſe he was not with the king in his army of Scotland, 'with horſes and arms. Roger de Cramavill was diſſeiſed of 'his land, becauſe he did not go with the king in his voyage to 'Ireland. Malgar de Vavaſur was diſſeiſed of his land, becauſe 'he neither went with the king into Ireland, nor made fine for 'the voyage.' *Madox*, *Hiſt. of the Exchequer*, *vol.* 1. *p.* 662. 663. See farther *Baron. Anglic. book.* 1. *ch.* 5.

(7) Littleton, tenures, ſect. 95. Du Cange, Gloſſ. voc. Scutagium.

(8)

(8) Daniel, Milice Françoiſe, liv. 3. Du Cange, voc. Coterelli, Brabanciones, Brabantini. Hume, Hiſt. vol. 1. p. 308.

In France, it is ſaid, that mercenaries were not employed in conſiderable numbers, till the reign of Philip the Auguſt. In England, it is thought, they were firſt known under Henry II. From the cauſes I mention, it is probable, that their uſe muſt have been familiar, and even extenſive, in both countries, in earlier times.

(9) Baronia Anglica, book 1. ch. 6. Daniel, Milice Françoiſe, liv. 3.

(10) 'The *religious*,' ſays *Madox*, 'inſiſted that they held 'all their lands and tenements in frankalmoigne, and not by 'knight ſervice. This allegation was uſed with ſucceſs by the 'abbot of Leyceſter, the priour of Novel-lieu without Staunford, 'and the abbot of Pippewell.' He cites the records which prove theſe frauds; and, in another place, appealing alſo to records, he has theſe words. 'The abbot of St Auſtin had a great ſucceſs in 'defrauding the king of his ſervices. The abbot, it ſeems, had 'been feoffed to hold by the ſervice of fifteen knights. Of theſe 'fifteen, he found means to conceal twelve, and anſwered to the 'king with three only.' *Baron. Angl. p.* 109. 114.

(11)

(11) A record of Henry III. ſays of Richard Crokel, 'Faciet 'ſervitium triceſimae partis feodi j militis.' A record of the ſame prince, ſays of John Hereberd, 'Faciet ſervitium ſexageſi-'mae partis unius feodi.' *Hiſt. of the Exchequer*, *vol.* 1. *p.* 650. 651. A variety of inſtances, to the ſame purpoſe, are to be collected.

On the ſuppoſition that the fractions of a fee beyond the eight parts, were not properly its members, the demands of ſervice for the thirtieth and the ſixtieth parts of a fee, muſt have been encroachments and ſeverities, againſt the uſual practice and uſages of fiefs. If *ſervice*, however, was required for ſuch fractions, the aſſeſſment of a *ſcutage* on the tenants of knight-ſervice would neceſſarily ſubject them in their proportion of payments. And the difficulties attending either the exaction of theſe ſervices, or theſe payments, muſt have been infinite.

It is to be confeſſed, that the giving the thirtieth or the ſixtieth part of the ſervice of forty days, which was the uſual term of the ſervice of the military tenants, has a ſtrange aſpect. Perhaps the grants I mention were not regulated by the uſual rules which directed fees. It is well known, that there were tenants in knight-ſervice who were bound to give, not the uſual ſervice of forty days, but the attendance of themſelves and their knights, both at home and abroad, at all times, and wherever it ſhould

ſhould be demanded. Even in this view, however, it is difficult to comprehend the regulations which muſt have governed the fractions of ſuch fees.

But there were alſo vaſſals in knight-ſervice whoſe ſtipulated time in the field and in expeditions was ſixty days. See *Etabliſſemens de S. Louis*, *p.* 23. There might thus, by the agreement of ſuperiors and tenants, be ſtipulated ſervices for one hundred, two hundred, or any definite number of days whatever. On this principle, it is eaſy to account for the fractions of fees which gave ſervice for the thirtieth, the ſixtieth, or any ſuch proportions of a fee. In this ſtate of the matter, however, the fractions I ſpeak of in the text, though out of the common uſage of fiefs, muſt have been *members* of the fee.

In the courtly and agreeable introduction to the Hiſtory of Charles the Fifth, in the *View of the Progreſs of Society in Europe, from the ſubverſion of the Roman Empire, to the beginning of the ſixteenth century*, of which the ſcheme is ſo comprehenſive, it is remarkable, that, amidſt a wide variety of other omiſſions, there is not even the ſlighteſt conſideration of knight-ſervice, and the knight's fee. Yet theſe circumſtances were of a moſt powerful operation, both with reſpect to government and manners. I make not this remark to detract from the diligence of an author whoſe laborioufneſs is acknowledged, and whoſe total abſtinence from all ideas and inventions of his own, permitted him to carry an undivided attention to other

men's thoughts and ſpeculations; but that, reſting on theſe peculiarities, I may draw from them this general and humiliating, yet, I hope, not unuſeful concluſion, that the ſtudy and knowledge of the dark ages are ſtill in their infancy. Are we for ever to revel in the ſweets of antient lore? And are we never to dig up the riches of the middle times?

CHAP.

# CHAPTER IV.

(1) AMONG the diſburſements from the Exchequer of the kings of England, there ſeems to have been much for the behoof of the knights of honour, whom they retained. This appears from a variety of records in *Madox*, and accounts for the high charges of the ſherifs for palfreys, ſaddles, gilt-ſpurs, peacocks-creſts, ſilk toiſes, robes, gloves, ſteel-caps, ſwords, and lances. *Hiſt. of the Exchequer, ch.* 10.

A penſion of L. 40 *per annum* was given by Edward III. to John Atte Lee, who had been inveſted with knighthood *in auxilium ſtatus ſui manutenendi;* and that Sir Nele Loring might better maintain the honour of knighthood, he granted to him, and his heirs male, L. 20 *per annum.* An annuity of forty marks was given to Sir John Walſh, by Richard II. to enable him to ſupport this dignity. And other examples to this purpoſe are to be collected. *Aſhmole on the Garter, p.* 34. See farther *Du Cange, voc. Milites Regis, et Diſſert.* 5. *ſur l'Hiſtoire de St. Louis.*

(2) Information concerning the knights retained by the nobles, is not to be found in that abundance which might be expected. In an account of the houſehold expence of Thomas Earl of Leiceſter an. 1313, there are charged 70 pieces of blue cloth for his knights, and 28 for the eſquires; 7 furs of powdered ermin, 7 hoods of purple, 395 furs of budge for the liveries of barons, knights, and clerks; 65 ſaffron-coloured cloths for the barons and knights; and 100 pieces of green ſilk for the knights. In this account, there is alſo a charge of L. 623 : 15 : 5, as fees to earls, barons, knights, and eſquires. *Stow, Survey of London, in Stype's edition, vol.* 1. *p.* 243. The total expenditure of the Earl of Leiceſter for one year, which was 7309, is valued by Mr Anderſon, at L. 21,927 of our money; and from the difference of living, or of the efficacy of money, his expence is made to be equal to L. 103,633. *Anderſon, Hiſt. of Commerce, vol.* 1. *p.* 153. A board for the knights was one of the eſtabliſhments of the fifth Earl of Northumberland. *Houſehold-book, p.* 310. See farther, *St Palaye, tome* 1. *p.* 312. 364.

(3) 'In the nineteenth year of King Henry III.' ſays *Madox*, 'all the ſherifs of England were commanded, by cloſe writs of 'the great ſeal, to make proclamation in their reſpective coun-'ties, that all they who held of the king in chief, one knight's 'fee or more, and were not yet knighted, ſhould take arms and 'get themſelves knighted, before the next Chriſtmas, as they 'loved

'loved the tenements or fees which they held of the king.' *Baron. Angl. p.* 130. Proclamations of this kind were frequent.

(4) The writs to take knighthood expreſſed often, in their boſoms, the ſingle knight's fee, as the eſtate entitling to knighthood; and they are valuable as aſcertaining, at different times, the value of the knight's fee. Thus, there are rolls of different dates which ſtate the knight's fee at fifteen, twenty, thirty, forty, and fifty pounds of yearly valuation. A ſpecification of ſuch records may be ſeen in *Aſhmole*, *p.* 33. and *Coke*, 11. *Inſtitute*, *p.* 597. And, it is to be wiſhed, that ſome intelligent perſon, who has acceſs to the public offices, would publiſh a ſeries of them. From ſuch a work ingenious men might derive many advantages.

It is not to be conceived, that the knight's fee which was held of a ſubject, could entitle to knighthood; and yet many learned writers have expreſſed themſelves to this purpoſe. It was the knight's fee *in capite*, or of the crown. This is illuſtrated by the writs of ſummons to take knighthood. And, of this writ, the record which follows, is an example, in the uſual or regular form.

Rex Vicecomiti Norf. et Suff. ſalutem. Praecipimus tibi, quod, viſis literis iſtis, per totam balivam clamari facias, quod omnes

omnes *illi qui de nobis tenent in* CAPITE *feudum unius militis, vel plus*, et milites non ſunt, citra feſtum natalis Domini anno regni noſtri decimo nono, arma capiant et ſe milites fieri faciant, ſicut tenementa ſua quae de nobis tenent diligunt. *Clauſ.* 19. *H.* 3. *m.* 25. *dorſo. ap. Madox, Hiſt. of the Exchequer, vol.* 1. *p.* 510.

(5) In the reign of Henry III. the honour of Dudley, and other lands of Roger de Sumery, were taken into the king's poſſeſſion, with all the chatels found on them; becauſe Roger did not come to be girt with the belt of knighthood. *Bar. Angl. p.* 131. For the ſame reaſon, the ſame prince ſeized the eſtates of Gilbert de Sampford and William de Montagu. And, in the twentieth year of Edward I. the ſherif of Kent was commiſſioned to ſeize the lands of ſuch perſons as did not appear to take knighthood, and to anſwer at the exchequer for the iſſues of them. *Hiſt. of the Exchequer, vol.* 1. *p.* 510.

The neglect of the ſherifs to diſtrain the lands of thoſe who were entitled to knighthood, and refuſed it, was often to ſubject them in amerciaments and puniſhments. And, what is remarkable, it appears that the command of the King's writ to his officers was at times accompanied with much ſeverity, in caſe they ſhould be negligent of their duty, or be tempted to connivance by bribes. This is illuſtrated by the evidence of the following writ to the ſheriff of Northamptonſhire.

Rex

Rex Vicecom. North. ſalutem. Praecipimus tibi quod, ſicut teipſum et omnia tua diligis, omnes illos in baliva tua, qui habeant viginti libratas terrae, diſtringas, quod ſe milites faciendos curent, citra nativitatem Sancti Johannis Baptiſtae proxime futur. Sciturus pro certo, quod ſi, pro munere, vel aliqua occaſione, aliquam relaxationem eis feceris, vel aliquem reſpectum dederis, nos ita graviter ad te capiemus, quod omnibus diebus vitae ſuae te ſenties eſſe gravatum. T. R. apud Wyndeſor decimo quarto die Aprilis. *Clauſ.* 28. *H.* 3. *m.* 12. *dorſo. ap. Aſhmole, p.* 33. See alſo *Coke*, 11. *Inſt. p.* 596.

Thus, by a ſtrange fate, chivalry was to grow into an impoſition and a tax. It is a wild circumſtance, and ſhows the unfortunate counſels, and the perverſe humour of Charles I. that this unamiable method of raiſing money was revived in his reign. An act of tyrannical inſolence was thus founded upon the pretext of an antient cuſtom. Charles lived to aboliſh the oppreſſion he had revived, and to ordain, that no perſon whatever ſhould be compelled to take the order of knighthood, or to undergo any fine or trouble for not having taken it. *Stat. Car.* I. *an.* 1640, *cap.* 20.

(6) In the reign of Henry III. Bartholomew Fitz-William gave v marks to have reſpite for taking knighthood; and Thomas de Moleton, and ſeveral others, gave fines on the ſame account. *Hiſt. of the Exch. vol.* 1. *p.* 509. In the ſame reign, Robert

Robert de Menevil paid v marks for a reſpite of knighthood for two years; and Peter Fouden 48 ſhillings and 8 pence for the reſpite of three years. And, for a ſuſpenſion from knighthood for the ſame period, John de Drokensford, in the days of Edward III. paid ten pounds. *Aſhmole*, *p.* 33.

The refuſing to take knighthood, when not puniſhed by the ſeizure of the land, was ſubjected to fines and amerciaments, which ſeem to have been arbitrary. In the time of Edward III. William, the ſon of Gilbert de Alton, paid twenty ſhillings for not appearing and receiving knighthood, according to the command of the King's proclamation; and the fine of forty ſhillings was ſet upon Simon de Bradeney, Thomas Trivet, and John de Neirvote. In the days of Henry IV. Thomas Pauncefoot paid four nobles for this neglect or contempt.. *Aſhmole*, *p.* 34. See farther *Baron. Angl. p.* 131. 132. *Camden*, *Introd. to the Britan. p.* 246. 247.

CHAP-

# CHAPTER V.

## SECTION I.

(1) 'FIT interdum,' ſays the old dialogue concerning the exchequer, 'ut imminente vel inſurgente in regnum 'hoſtium machinatione, decernat rex de ſingulis feodis militum 'ſummam aliquam ſolvi, marcam ſcilicet, vel libram unam; un-'de militibus ſtipendia vel donativa ſuccedant. Mavult enim 'princeps ſtipendiarios, quam domeſticos bellicis apponere 'caſibus. Haec itaque ſumma, quia nomine ſcutorum ſolvitur, '*ſcutagium* nuncupatur.' *Dial. de Scaccar. lib.* 1. *ſect.* 9.

It was according to the number of their fees that the barons and tenants *in capite* were charged with *ſcutage*. Each knight's fee paid a determined ſum to the King. And, as the vaſſals of the crown were charged with the full payments for their fees, they had recourſe for compenſation to their knights, from whom they claimed a ſcutage in proportion to the fees held and poſ-

 ſeſſed

ſeſſed by each. The king applied to his vaſſals, and his vaſſals applied to their tenants.

(2) It is commonly conceived, on the authority of Alexander de Swereford, an accurate obſerver of records, that, in England, there was no *ſcutage* or tax on knight-fees before the reign of Henry II. There is great probability, however, that the ſcutage preceded the age of this prince. It is to be thought that it was coeval with the uſe of *mercenaries ;* but the period of the introduction of theſe is not, I believe, to be aſcertained with preciſion.

In the ſecond year of the reign of Henry II. there was a ſcutage for the army of Wales. It was aſſeſſed only on the prelates who held their lands in knight-ſervice. They paid at the rate of xx s. for each knight's fee. There was, in the fifth year of the ſame reign, a ſecond ſcutage for the army of Wales ; and it was aſſeſſed not only on the prelates, but on all the tenants by knight-ſervice indiſcriminately. They paid two marks for each knight's fee. In the thirty-third year of the ſame prince, there was a ſcutage for the army of Galway. It was xx s. *per* fee. Under Richard I. a ſcutage for Wales was aſſeſſed at c s. *per* fee. *Madox, hiſt of the Excheq. vol.* 1. *p.* 620. *et ſeq.*

I know that the firſt mode of taxation in England was not the tax on knight's fees, of which I now ſpeak. In the Anglo-Saxon times,

times, Danegeld was an impoſition on the landed property of England; and it was eſtabliſhed with the conſent of the people in the wittenagemot or national council. The earlier Norman princes appear alſo to have levied this tribute; but, in doing ſo, they probably exerciſed an illegal ſtretch of prerogative.

It was as mercenaries came to be employed, and as the ſpirit of the feudal inſtitutions declined, that the ſcutage, or the tax on knight-fees, was to prevail. To this tax the *Magna Charta* gave a blow, which, in time, was to be deciſive. The grant of money by the people ſucceeded to it. Subſidies, tenths, and fifteenths, were adopted, and continued long. The tax of Danegeld was only intended as a temporary expedient. The ſcutage led the way to a regular, a conſtant, and a formal method of taxation.

(3) Kennet, Collection of Engliſh Hiſtorians. Madox, Hiſt. of the Exchequer. Hume, Hiſtory of England.

(4) It is an important circumſtance, that the free gifts of cities and towns ſhould have grown into taxes. In France, in the year 1231, the burgeſſes of S. Omer paid to S. Louis the ſum of 1500 livres; and this payment was called a *donum*; a proof that it was not exigible as a duty. It is likewiſe evident, that, in France, ſuch preſents had been common, and had grown into taxes. *Bruſſel, Uſage-general des Fiefs, liv. 2. ch. 32.*

In England, it is clear, from a variety of records produced or appealed to in *Madox*, that the word *donum* muſt alſo have been uſed to expreſs gifts that were free. *Hiſt. of the Exchcq. ch.* 17. After mercenaries were known, theſe gifts ceaſed to be free, and were termed *tallages*. And of tallages, both in England and France, there are frequent examples in the books I have juſt cited. See farther *Du Cange, voc. Donum.*

As Kings received gifts which they were to convert into tallages, ſo the lords and ſuperiors, who were honoured with ſimilar preſents, did not fail to change them alſo into taxes or cuſtoms. *Du Cange, voc. Talliare.*

What is curious in a peculiar degree, the diſtant ſource of theſe uſages, and the ſpirit of them too, while manners retained their ſimplicity, may be ſeen in the following words of *Tacitus*, of which this note may ſerve as an illuſtration. 'Mos eſt civita-'tibus ultro et viritim conferre principibus vel armentorum vel 'frugum, quod pro honore acceptum, etiam neceſſitatibus ſubve-'nit.' *De Mor. Germ. c.* 15.

A diſtinction of great moment, as to civil liberty, deſerves here to be remarked. During the pure times of the Gothic manners, the towns and boroughs made gifts at their own pleaſure. When theſe manners were altered, they were tallaged at the pleaſure.

pleaſure of the crown and the barons. The former times were times of liberty; the latter of oppreſſion.

When Dr Brady, therefore, Mr Hume, and a multitude of writers, enlarge on the low and inſignificant ſtate of the towns, and, treating their inhabitants as little better than ſlaves, infer thence, the original deſpotiſm of our government, they are only active to betray their inattention. It is ſtrange, that men of genius and talents, ſhould take ſo lame a ſurvey of this ſubject. Of the two ſtates or conditions of ſociety which prevailed, they have no conception. They knew only the hiſtory of towns in their laſt ſituation, and could not perceive that the oppreſſions they ſaw had only a reference to the change of manners, and the breaking down of the feudal ſyſtem, which affected, indeed, the adminiſtrations of princes, and the conduct of the nobles to their vaſſals, but did not alter the eſtabliſhed form of our government.

From the *Magna Charta*, theſe authors preſume to date the commencement of our liberty; while that monument is a proof, the moſt indubitable, of the encroachments which had been made upon liberty, ſince it was its great purpoſe to deſtroy them.

(5) 'Nullum *ſcutagium* vel *auxilium* ponatur in regno noſtro, niſi 'per *commune conſilium* regni noſtri, niſi ad corpus noſtrum redimen-'dum, et ad primogenitum filium noſtrum militem faciendum, 'et ad filiam noſtram primogenitam ſemel maritandam; et ad 'hoc

'hoc non fiet nisi rationabile auxilium.' *Magna Charta, Reg. Joan. ap. Spelm. Cod. vet. p.* 369.

The *scutagium* was the tax on lands held in knight-service. The *auxilium* was any tax whatever. I am sensible, that, after the *Magna Charta*, there are instances of taxes which were levied without the concurrence of the great council of the nation; but these were violations of the constitution, and of liberty. For, from that period, the legal method of assisting government was by a parliamentary subsidy or assessment. The violent exactions of several princes, posterior to the *Magna Charta*, are, indeed, held out, by many authors, as descriptive of the despotism of our government. But of such authors, it is to be said, that they cannot distinguish our constitution from the administrations of our princes. The madness or the folly of a King may disfigure our government by wild, encroaching, and unhappy exertions; but from these we must infer nothing against those principles of liberty upon which it is founded.

(6) 'Simili modo fiat de *auxiliis* de civitate Londinensi. Et civitas Londinensis habeat omnes ANTIQUAS *libertates, et liberas consuetudines suas*, tam per terras quam per aquas. Praeterea volumus et concedimus, quod omnes aliae civitates, et burgi, et villae et barones de quinque portubus, et omnes portus habeant *omnes libertates et omnes liberas consuetudines suas*, et ad habendum

'dum *commune conſilium regni* de auxiliis aſſidendis.' *Mag. Chart. ap. Spelm. Cod. vet. p.* 369.

The *Magna Charta* was explanatory of the *antient* law and cuſtom, as well as correctory of abuſes and tyranny. It is to be regretted, that, notwithſtanding all which has been written concerning this invaluable record, there ſhould yet, at this late hour, be deſiderated a complete illuſtration of it. Much, I know, has already been executed towards this end; but, if I am not greatly deceived, there remains ſtill more to be done. And this, I imagine, will appear clearly to the philoſophical reader, who will attend to it, in its connection with hiſtory, law, and manners.

SECT-

## SECTION II.

(1) BRUSSEL, Uſage-general des Fiefs, liv. 2. ch. 6. Bacon, Diſcourſe on the Government of England, part 1. p. 141. 264.

(2) Daniel, Milice Françoiſe, liv. 4. Hume, Hiſtory of England, vol. 2. p. 85. Barrington, Obſervations on the more antient ſtatutes, p. 379.

(3) Bacon, Diſcourſe on the Government of England, part. 1. ch. 63. 71. Lord Lyttelton, Hiſt. of Henry II. vol. 3. p. 354.

(4) *Pere Daniel* mentions an array in France in the 1302, which called out ‘ *tous* les François nobles, et non nobles, de ‘ quelque condition qu'ils ſoient, qui auront âge de 18 ans et plus, ‘ juſqu' á l'âge de 60 ans.’ He adds, ‘ Ce n'eſt pas á dire pour ‘ cela que tous marchaſſent en effet: Mais ceux que le roi com- ‘ mettoit pour faire ces levées, prenoient de chaque ville, et de ‘ chaque

'chaque bourg et village le nombre d'hommes, et telles hommes 'qu'ils jugeoient á propos en ces occaſions.' *Hiſt. de la Milice Françoiſe, vol.* 1. *p.* 57.

In England, 'in the ſixteenth year of King Edward II. a 'commiſſion iſſued out of the exchequer to Geoffrey de St Quyn-'tyn and John de Kaſthorp, ordering them to raiſe ſpeedily, in 'every town and place in the wapentake of Dykeryng, as well 'within the franchiſes as without, all the defenſible men that 'were between the age of ſixteen and ſixty, as well of gentz 'd'armes as of foot, each man being duly arrayed, according to 'his eſtate, and to put the ſaid men in *array* by hundreds and 'twenties, and being ſo arrayed, to lead them to the King at York, 'by ſuch a day, to act againſt the Scots. The like commiſſions 'iſſued out of the exchequer, to John de Belkthorp and Geof-'frey Stull, for the wapentake of Buckros, and to other perſons, 'for other wapentakes.' *Madox, Hiſt. of the Exchequer, vol.* 2. *p.* 111.

An example of an array, in the reign of Edward I. is alſo remarked by *Mr Madox*, and it proceeded on writs from that prince to all the ſheriffs of England *. It has been thought, that



* In his writ to each ſherif, after having ordered the *array*, and expreſſed his meaning, he ſubjoins theſe words. 'Et hoc, ſicut indignationem noſtram 'vitare et te indempnem ſervare volueris, nullatenus omittas.' *Hiſt. of the Exchequer, vol.* 2. *p.* 104.

King John's reign afforded the firſt inſtance of an array. But I think it highly probable, that arrays were prior to his age. Mr Hume had met with no commiſſion of array till the reign of Henry V. and this circumſtance could not fail of leading him into miſtakes. *Hiſt. of England, vol. 2. p.* 321.

Arrays for ſailors were practiſed after the ſame method as for ſoldiers. The cuſtom is ſtill retained in *the preſſing of ſeamen.* It is ſomewhat remarkable, that this illegal power is yet ſuffered to remain with the crown. If exerted as to ſoldiers, it would ſeem the higheſt tyranny. In apology for it, authors have ſaid, that it is difficult to diſcover an expedient to anſwer its purpoſes, without greater danger to liberty.

(5) Daniel, Hiſt. de la Milice Françoiſe, liv. 3. ch. 8. Hume, Hiſt. of England, vol. 2. p. 224. Barrington, Obſervations on the more antient Statutes, p. 378. 380.

I am diſpoſed to believe, that it was chiefly the enormous diſſoluteneſs and irregularity of manners introduced by the mercenaries, which deformed England ſo much in the reign of Edward I. that the ordinary judges were thought unable to execute the laws. This, it would ſeem, made Edward invent a new tribunal of juſtice, which had power to traverſe the kingdom, and to inflict diſcretionary puniſhments on offenders. *Spelman. Gloſſ. voc. Trailbaſton.* Yet a court ſo inquiſitorial was a daring inſult to a free nation, and infinitely a greater calamity, than all the diſorders

ders which prevailed. That country is miſerable where the diſcretion of a judge is the law.

(6) Daniel, Hiſt. de la Milice Françoiſe, liv. 4. The archers were called *frank*, becauſe they were free from taxes.

(7) 3. Inſtitute, p. 85. 87. Barrington on the more antient Statutes, p. 379. 380.

(8) Bacon, Diſcourſe on the Government of England, part. 1. p. 187. part 2. p. 60.

(9) 2. Inſtitute, p. 3.

(10) Parl. an. 1. Hen. IV. de Depoſit. Reg. Ricardi II. ap. Dec. Script. p. 2748.

(11) *Sir John Forteſcue*, who reſided ſome time in France with Prince Edward, the ſon of Henry VI. and who wrote there his excellent treatiſe, 'De Laudibus Legum Angliae,' deſcribes, from actual knowledge, the exorbitant inſolence of the French ſoldiery, and the miſerable condition of the people. The picture he draws is too long for inſertion in this place. But, though the features are ſtrong, there is no reaſon to ſuſpect the likeneſs. A native of Great Britain, in attending to it, muſt feel, in a lively degree, the happy advantages of our free conſtitution.

(12) 12. Charles II. cap. 24.

# CHAPTER VI.

(1) TACITUS alludes to the hiſtoric ſongs of the old Germans, of which it was doubtleſs the purpoſe to record the migrations of tribes, and the exploits of chieftains. Of ſuch ſongs, there were many in the eight century; and Charlemagne was fond of committing them to his memory. *Eginhart, Vit. Car. Magn. c.* 29. Of the celebrated Attila, it is ſaid, that he had conſtantly his poets in waiting, and that their verſes in honour of his exploits, were a part of the entertainment of his court. *Priſcus, p.* 67. 68. In all rude times, the character of the bard is in repute, and attended with diſtinctions. This character was not peculiar to our anceſtors, as ſome writers have fancied; for we find it among the Greeks, and in other nations. It is peculiar to the early ſtate of ſociety, when the paſſions are warm, and language imperfect.

(2) It is a common notion, that the poets and Troubadours were only to be found in France and Italy. They were frequent, however, in all the countries of Europe; and they haſtened, by their rivalſhip, the progreſs of literature.

Henry

Henry III. had a poet or Troubadour in his ſervice, on whom he beſtowed a regular penſion. This circumſtance is to be gathered from the following record. 'Rex theſaurario et camerariis ſuis ſalutem. Liberate de theſauro noſtro, dilecto nobis 'Magiſtro Henrico verſificatori centum ſolidos, qui ei debentur 'de arreragiis ſtipendiorum ſuorum. Et hoc ſine dilatione et 'difficultate faciatis, licet ſcaccarium ſit clauſum. T. R. apud 'Wodſtoke xiiij die Julii.' 35. *H.* 3. *ap. Madox, Hiſt. of the Excheq. vol.* 1. *p.* 391.

There is a commiſſion of Henry VI. *De Miniſtrallis propter ſolatium regis providendis*, from which it is to be gathered, that the recitation or chaunting of ſongs, was an amuſement in repute and faſhion. *Rymer*, 34. *Henry* VI. The fifth Earl of Northumberland had his minſtrels and players; and it was a qualification of his almoner, that he was 'a maker of interludes.' *Houſhold-book, p.* 44. 85. 93. 331. 339. The reader may conſult farther on this ſubject, an author, who is not more diſtinguiſhed by the ſoundneſs of his knowledge, than by the claſſical ſimplicity of his language, Mr *Warton*, in his hiſtory of Engliſh poetry.

(3) Hiſtoire Litteraire des Troubadours, par M. l'Abbé Millot.

(4) It

(4) It is to be obſerved, that it was the married women chiefly who vied in the merits of their poets and Troubadours. An intereſting figure, as well as the talent of rhyming, was neceſſary to the Troubadour; and it was his conſtant aim to gain the heart or the perſon of his patroneſs. Perhaps it would be to refine too much, if one ſhould conſider the preſent infidelity of the married women in France, as a relict of this uſage, and the corruptions of chivalry.

Of the Duke of Orleans, the brother of Charles VI. there is a pleaſant notice in Brantome, which illuſtrates very aptly the profligate manners introduced by fiefs and chivalry. 'C'etoit 'un grand debaucheur de dames de la cour, et des plus grandes: 'Un matin en ayant une couchée avec lui dont le mari vint par 'hazard pour lui donner le bon jour, il cacha la tête de cette 'dame, et lui découvrit tout le corps, la faiſſant voir et toucher 'nue à ce mari à ſon bel aiſe, avec defenſe ſous peine de la vie 'd'oter le linge du viſage . . . Et le bon fut que le mari etant 'la nuit d'après couché avec ſa femme, lui dit que M. d'Orleans 'lui avoit fait voir la plus belle femme nue qu'il eut jamais 'vue; mais, quant au viſage, qu'il n'en ſçavoit que dire, ayant 'toujours été caché ſous le linge.' It is added, 'De ce petit 'commerce, ſortit ce brave et vaillant bâtard d'Orleans, Comte 'de Dunois, le ſoutien de la France et le fleau des Anglois.' *Brantome, ap. St. Foix, Eſſ. hiſtor. vol.* 1. 319.

(5) See,

(5) See, in Ste Palaye, le voeu du Paon ou du Faiſan, et les Honneurs de la Cour.

(6) Hiſtoire des Troubadours, tom. 1. p. 11.

(7) This invention is aſcribed to William the ninth Earl of Poitou. 'Ce fut un valeureux et courtois chevalier, mais grand 'trompeur de dames.' *Hiſt. des Troub. tom.* 1. *p.* 4. 7.

(8) Le Moine de Foſſan, a Troubadour, compoſed a ſong, in which he thus ſpeaks of the *Virgin*. 'Je ſuis devant elle à 'genoux, les mains jointes, comme ſon tres humble eſclave, 'plein d'ardeur dans l'attente de ſes regards amoureux, et d'ad-'miration dans la contemplation de ſon beau corps et de ſes 'agreables manieres.' *Hiſt. des Troub. tom.* 2. *p.* 225.

(9) Deudes de Prades, a troubadour, has this ſentiment: 'Je 'ne voudrois pas être en Paradis, à condition de ne point aimer 'celle que j'adore.' *Hiſt. de Troub. tom.* 1. *p.* 321.

(10) It was ſaid wittily, but not without reaſon, by the Troubadour Raimond de Caſtelnau: 'Si Dieu ſauve pour bien man-'ger et avoir des femmes, les moines noirs, les moines blancs, 'les Templiers, les Hoſpitalieres, et les Chanoines auront le Pa-'radis; et Saint Pierre et Saint André ſont bien dupes d'avoir 'tant

'tant ſouffert de tourmens, pour un paradis qui coute ſi peu aux 'autres.' *Hiſt. des Troub. tome* 3. *p.* 78.

It was in conſequence of the depraved manners of the clergy, that, in England, the perſonage who, in the ſeaſon of Chriſtmas feſtivity, was to preſide in the houſes of the nobility over riotous mirth and indecent indulgencies, was termed 'the abbot 'of miſrule.' This character appears in the eſtabliſhment of the fifth Earl of Northumberland, an. 1512. *Houſhold-book*, *p.* 344. See alſo *Dr Percy's* notes to this record.

In Scotland, the ſame character or perſonage ſeems to have been ſtill more common, and even ſo familiar in the loweſt ranks of civil life, that he grew to be a nuiſance in towns and boroughs. His appellation there was, 'the abbot of unreaſon;' and, when the ſeverity and ſtarchneſs of the reformation foured and deformed this country with the hypocritical preciſeneſs, and the diſmal formality which have not yet left it, an act of parliament was thought expedient to ſuppreſs and aboliſh an office ſo highly licentious and profane. 6. *Parl. Mary* 1555.

(11) Giannone, Hiſtory of Naples, vol. 1. p. 283. 446. Mezeray, Moeurs de l'Egliſe du xi. ſiecle. Du Cange and Spelman, voc. Focaria. Ste Palaye ſur l'anc. cheval. partie 5.

(12) Joinville, Hiſtoire de S. Louis, p. 32.

(13) 'Si quis dixerit *conjugi*, malam licentiam dando, *vade* 'et concumbe cum tali homine; aut ſi dixerit alicui homini, *veni et* '*fac cum muliere mea* [illegible]*nis commixtionem*; et tale malum fac- 'tum fuerit, et cauſſa probata fuerit, quod per ipſum maritum 'factum ſit, ita ſtatuimus, ut illa mulier, quae hoc malum fece- 'rit et conſenſerit, moriatur, ſecundum anterius edictum; quia 'nec talem cauſſam facere, nec celare debuit.' *Leg. Longobard. p.* 1096. *ap. Georgiſch, Corp. Jur. Germ. Antiq.*

This law evinces the antiquity and the heinouſneſs of the practice alluded to; but, in poſterior times, the faſhion was thought of more lightly, and too prevalent to be puniſhed with ſeverity. See ſome curious information in *Du Cange, voc. Cugus, Cucucia, Licentia Mala, Uxorare.*

(14) The *Gynaeceum*, by which the apartment was expreſſed where the women were kept to work at the needle, and other domeſtic employments, came to ſignify a brothel, or place of debauch, from the uſe that was made of it. *Du Cange, voc. Gynaeceum.* Over the doors of a palace which belonged to Cardinal Woolſey, there was written, *Domus Meretricum Domini Cardinalis.* It has been ſaid, indeed, that *Meretrices* ſtood of old for *Lotrices*; and the advocates for the chaſtity of the Cardinal contend, of conſequence, that this inſcription only ſerved to direct to his *laundry*. But, I am afraid, that this plea will not hold. For the terms were convertible; and the women who acted

acted in the laundry, and who were employed in working in linen and tapeſtry, were in general the convenient miſtreſſes, to whom their lords paid a temporary worſhip. It was from ſome miſtakes of this ſort, that, in the reign of Elizabeth, there was an order, that no *laundreſſes*, nor women called victuallers, ſhould come into the gentlemens chambers of Gray's Inn, 'unleſs they 'were full *forty* years of age.' *Dugdale, Orig. Jurid. p.* 286.

(15) Ranulph. de Hengham, Summa Magna, cap. 2. and Selden's notes to it.

(16) In the *Britannia*, in the deſcription of Surrey, there is this notice. 'Hamo de Catton held Cattelhull-manour by be-'ing *Marſhal of the whores* when the King ſhould come into 'theſe parts.' *Camden, vol. 1. p.* 181. In the reign of Edward II. Thomas de Warblynton held the manor of Shirefeld in Hampſhire, of the King in chief, by the ſerjeanty of being *Marſhal of the whores* in the King's houſehold, and of diſmembering malefactors condemned, and of meaſuring the galons and buſhels in the King's houſehold. The words of the record are, 'Tenuit in capite, die quo obiit de Domino E. nuper rege An-'gliae patre regis nunc, per ſargantiam eſſendi *Mareſchallus de* '*meretricibus in hoſpitio regis*, et diſmembrare malefactores ad-'judicatos, et menſurare galones et buſſellos in hoſpitio regis.' *Faſ. Fines* 1. *Edw.* III. *Rot.* 8. *a. ap. Bar. Angl. p.* 242.

(17) The vaſſal forfeited his eſtate in the following caſes: 'Si dominum cucurbitaverit (id eſt, uxorem ejus ſtupraverit,) 'vel turpiter cum ea luſerit. Si cum filia domini concubuerit, 'vel nepte ex filio, vel cum nupta filio, vel cum ſorore domini 'ſui *in capillo*, id eſt, in domo ſua manente.' *Lib. Feud. ap. Spelman Gloſſ. voc. Felonia.*

The words *in capillo*, allude to a peculiarity in the Germanic and Gothic manners, which deſerves to be explained. All virgins wore their hair uncovered, and with ornaments. Married women concealed their hair, and covered their heads. The ornaments for the hair were many. And, in the progreſs of time, it was not the hair of their heads only, that the women were curious to deck out. The mother of the fair Gabrielle being aſſaſſinated, her body lay, for many hours, expoſed, in a public manner, to the ſpectator, and in a poſture ſo exceedingly *indecent*, that it diſcovered a ſtrange mode or affectation. In this laſt faſhion, which was probably introduced in the decline of chivalry, the ornaments were ribands of different colours; and, it ſeems to have been peculiar to women of rank and condition. *St Foix, Eſſ. Hiſt. vol. 4. p.* 82.

In general, it merits remark, that the veneration for their hair entertained by the Germans and their poſterity, was very great, and gave riſe to a multitude of cuſtoms. It was a mark of refined attention in a perſon to preſent a lock of his hair to a friend

on

on ſaluting him; it was to ſay, that he was as much devoted to him as his ſlave. To take away the hair of a conſpirator, was one of the moſt afflicting parts of his puniſhment. To give a ſlave the permiſſion of allowing his hair to grow, was to offer him his freedom. *Du Cange and Spelman, voc. Capilli.* William Earl of Warrenne, in the age of Henry III. granted and confirmed to the church of St Pancrace of Lewes, certain land, rent, and tithe, and gave ſeiſine of them 'per *capillos* capitis ſui, 'et fratris ſui Radulfi de Warr. quos abſcidit de capitibus ſuis 'cum cultello ante altare.' *Mag. rot.* 24. *Henry* III. *ap. Madox. Hiſt. of the Excheq. Prefatory Epiſt. p.* 30. This muſt have been a compliment in the higheſt ſtyle of flattery; and the clergy of St Pancrace muſt have been enchanted with the politeneſs of this nobleman.

There ſeems ſomething wild and romantic in ſuch uſages; yet they produced the locket and the hair-ring of modern times; and we ſmile not, nor are ſurpriſed, that theſe ſhould teach us to employ our moments of ſoftneſs in melancholy recollections of abſent beauty, or departed friendſhip. What is diſtant and remote, affects us with its ridicule. What is preſent and in practice, eſcapes our cenſure. In the one inſtance, we act with the impartiality of philoſophers; in the other, we are carried away by our paſſions and our habitudes.

(18) St Foix, Eſſ. Hiſtor. vol. 1. p. 102. Stow, Survey of London, in the Edition of Strype, vol. 2. p. 7.

(19) There is evidence of public or licenſed ſtews in England in *Stat.* 2. *Henry* VI. *cap.* 1. *in Cowel, voc. Stews, Spelman, voc. Stuba, and in Coke*, 3. *Inſtitute, ch.* 98. Henry II. gave his privilege to the ſtew-houſes of Southwark, according to the 'old 'cuſtoms which had been uſed there time out of mind.' And patents confirming their liberties were granted by other princes. *Stow, in Strype's edit. vol.* 2. *p.* 7. In Normandy, there was a *cuſtos meretricum*; and this officer ſeems to have been known in the different countries of Europe. *Du Cange, voc. Cuſtos meretricum, et Panagator.*

It has frequently been a ſubject of inquiry among politicians, whether public ſtews, under proper regulations, with a view to the health of individuals, and the peace of ſociety, be not an advantageous inſtitution. In ſome ſtates of Europe, a tolerated or authorized proſtitution is known at this day. And, by the Code of Gentoo laws, this inſtitution was acknowledged as ſalutary; and proſtitutes forming a community were, in Hindoſtan, an object of care to the government. I avoid, however, to enter into a queſtion of ſuch infinite delicacy. It is dangerous in a ſtate to give the ſlighteſt ſtab to morality. Yet, I cannot but obſerve, that, in the moſt cultivated nations, there are laws and regulations which wound

wound morality more ſeverely than could be done by an authorized proſtitution, and with leſs of utility to mankind.

(20) The licenſed ſtew-houſes in the reign of Henry VII. were the Boar's-head, the Croſs-keys, the Gun, the Caſtle, the Crane, the Cardinal's-hat, the Bell, the Swan, &c. *Sir Edward Coke* has preſerved this information, 3. *Inſtitute*, *p.* 205. In the time of Edward VI. Biſhop Latimer complained and preached to the following tenor. 'There is more open whoredom, more '*ſtued* whoredom, than ever was before. For God's ſake, let it 'be lookt to.' *Stow*, *in Strype's edit. vol.* 2. *p.* 8.

(21) 3. Inſtitute, p. 206.

(22) Spelman voc. Stuba, 3. Inſtitute, p. 205.

CON-

# CONCLUSION.

I Preſume not to think that I have exhauſted the topics I treat in this volume. For, what ſubject does not ſtretch to infinity? But it has been my particular care to go back to the ſources, and to expreſs the beginnings of law, government, and manners; and I have been ſolicitous to open up, with a due advantage, the original ideas, which I have ventured to ſtrike out, and which, perchance, may attract the notice of the ingenious and the learned. Yet, when I conſider what many great men have written before me concerning human affairs, I know not, whether it ought to flatter my pride, or to fill me with ſhame, that I, too, have yielded to my reflections and my ſentiments; and, though in the obſcurity of a private ſtation, and in the fervour of youth, have preſented to my fellow-citizens this aſpiring fruit of my ſtudies and ambition.

APPENDIX.

# APPENDIX.

## No. I. P. 224.

ARTICLE I. *Charta* Dotis *quam Folradus conſtituit Helegrinae Sponſae ſuae.*

IN Dei nomine. Dulciſſima ſponſa mea Helegrina. Ego enim Folradus filius quondam Eriperti ex genere Francorum, et modo habitator ſum in pago Pinnenſi. Dum non eſt incognitum qualiter per voluntatem Dei vel parentum quondam tuorum te deſponſavi et carnali conjugio ſociari diſpono, propterea dono tibi He. ſponſa mea in honore pulchritudinis tuae in die nuptiali dotem dignam atque aptam, hoc eſt, manſos meos infra vicum Pinnenſem, qui mihi pertinet et ex comparatione evenit et data mea pecunia comparavi. Trado tibi ipſos manſos cum omni integritate ſua et domum dignam ad commanendum exquiſitam caſam unam conſtratam, cum omnibus utenſilibus et vaſis, cum omnibus adjacentiis ad ipſos manſos aſpicientibus vel pertinentibus, cum terris et vineis, pomis, cum omnibus quae

ſuper ſe habentur vel ad ipſam curtem de Vico pertinent, et quae habere viſus ſum, vel inantea Deo adjuvante ibidem parare vel conquirere potuero, in integrum iſta omnia ſuperius comprehenſa, ſi nos Deus carnali conjugio ſociari voluerit, in die nuptiali tibi dono, trado, atque tranſcribo ad poſſidendum, ut quicquid exinde facere volueris, liberam et firmiſſimam in omnibus habeas poteſtatem. Si quis vero, quod futurum eſſe non credo, fuerit inpoſtmodum ego aut aliquis de heredibus meis, ſeu quaelibet ulla oppoſita perſona contra hanc cartulam libellum dotis venire tentavertit, aut eam frangere voluerit, primitus iram Dei incurrat, et inſuper una cum ſocio fiſco aurum libram unam, argentum pondera duo mulctam componat, et quod repetit non vendicet, ſed haec cartula libellum dotis omni tempore firma et ſtabilis permaneat, cum ſtipulatione ſubnixa. Unde pro ſtabilitate veſtra Audoaldum Notarium ſcribere rogavimus. Actum in Vico anno regni et imperii Domini Ludovici xxx. et primo anno Supponis Comitis, die viiii. menſis Junii, Indictione v. Signum Folradi, qui hunc libellum dotis fieri rogavit. Lioto, Majolfus, Aloini, teſtes. *An.* 827. *Ex. Chartulario Monaſterii Caſaurienſis, ap. Baluz. Capit. Reg. Franc. vol.* 2. *p.* 1427.

ART.

ART. II. *A reciprocal Grant. Roger Pit and his Wife grant and releaſe to the Priour of Brommore a Tenement held in* Dower ; *and the Priour grants a yearly Rent for the Life of the Wife.*

SCIANT praeſentes et futuri, quod haec eſt carta Cyrographata, anno ab Incarnacione Domini Milleſimo CCXLIIII facta, inter Dominum S. Priorem et Conventum de *Brummore* ex una parte, et *Rogerum de la Putte* et *Editham* uxorem ſuam ex altera. Scilicet, quod praedictus *Rogerus* et *Editha* uxor ſua, tradiderunt, et conceſſerunt, et quietum clamaverunt, ad vitam ipſorum, totum tenementum quod dictae *Editbae* evenit in dotem, de *Hugone Fichet*, in villa de *Brummore*, cum omnibus pertinenciis. Et dicti Prior et Conventus tenentur reddere, ſingulis annis, ad feſtum *S. Michaelis*, tres ſol. et VI denar. dictis *Rogero* et *Editbae* uxori ſuae, quamdiu ipſa vixerit. Si vero, quod abſit, praedicti Prior et Conventus dictum redditum, ſcilicet III ſol. et VI den. praenotato termino non ſolverint praedictis *R* et *E* uxori ſuae, licebit tenementum ſuum diſtringere, donec fuerit eis ſatisfactum. Tenentur etiam acquietare dictum *Rogerum* et *E* uxorem ſuam, de omnibus ſectis tam comitatus quam Hundredi, et omnium aliarum Curiarum, et de omnibus taillagiis tam Regalibus quam aliis, dicto tenemento ſpectantibus. Hanc Convencionem fideliter et ſine dolo tenendam, ex utraque parte aſſidaverunt. Et ad majorem ſecuritatem faciendam, alterno ſcripto ſigilla ſua appoſuerunt. Hiis teſtibus, *Ric. de Burle*,

*Johanne Baldewin, Johanne de Brummore, Rocelino de Burle, Hugone de Lapolot, Philippo le Champiun*; et multis alliis. *Ap. Madox, Formulare Anglicanum, p.* 84.

ART. III. *A Releaſe of a yearly Rent in Dower.*

OMNIBUS Chriſti fidelibus ad quos praeſens ſcriptum pervenerit, *Nicholaa* quae fui uxor *Willelmi de Nafford* in *Bereford* ſalutem in Domino. Noveritis me in pura et legitima viduaetate mea, relaxaſſe et omnino pro me et haeredibus meis vel aſſignatis quietum clamaſſe Domino *Fulconi de Lucy* Militi, et haeredibus ſuis vel aſſignatis, totum Jus et clameum quod habui vel aliquo modo habere potui, in tribus ſolidatis redditus quos ab eodem Domino *Fulcone* recipere ſolebam nomine Dotis meae per annum, ad feſtum Sancti *Michaelis*, de tenemento quod *Johannes de Merchull* tenuit in *Bereford;* Ita quod nec ego nec haeredes mei vel aſſignati, nec aliquis nomine meo, aliquid juris vel clamii a praefato Domino *Fulcone* et haeredibus ſuis vel aſſignatis, occaſione dictorum trium ſolidorum redditus, decaetero exigere vel vendicare poterimus. In cujus rei teſtimonium, praeſenti ſcripto Sigillum meum appoſui. Datum *Bereſordiae* die *Lunae* in Craſtino *S. Mariae Magdelenae*, Anno regni Regis *Edwardi* decimo nono. *Ap. Formulare Anglicanum, p.* 381.

No II.

## No. II. P. 239.

ART. I. *A Feoffment in Frankmarriage of Land, a Capital Manſion, &c. made to a Man with the Daughter of the Feoffer.*

SCIANT omnes tam praeſentes quam futuri, quod ego *Petrus de Poketorp* dedi et conceſſi, et hac mea praeſenti carta confirmavi, *Herveio* filio *Willelmi* filii *Jole*, in Maritagio cum *Matilda* filia mea, duas bovatas terrae in *Snape*, cum pertinenciis ; illas ſcilicet quae ſunt remociores a Sole, in dimidia carucata terrae quam *Robertus* filius *Radulfi* michi dedit pro Humagio et Servicio meo ; Et capitalem Manſuram meam in eadem villa ; Et gardinum meum ultra aquam ; et pratum meum apud *Sutham Kelde* ; Et praeterea apud *Joles Croft* tres acras terrae et dimidiam ; Illi et haeredibus qui de praedicta filia mea exibunt : Tenendum de me et de haeredibus meis in feudo et haereditate, libere, et quiete : Faciendo forinſecum ſervicium, quantum pertinet duabus bovatis terrae in feudo quo duodecim carucatae terrae faciunt feudum unius Militis. Et ex incremento dedi ei ſervicium duarum bovatarum terrae in *Torneton Watlous*, quas *Herveius de Norfolke* de me tenuit, et quas *Tomas de Torneton et Beatricia* Sponſa ſua michi pro Humagio et Servicio meo dederunt. Hiis teſtibus (viz. *Seven Perſons*) et multis aliis. *Ap. Formulare Anglicanum, p.* 79.

ART.

ART. II. *A Feoffment, or Gift of Land in Frankmarriage with the Sister of the Donor.*

SCIANT tam praesentes quam futuri, quod ego *Ricardus Takel* de *Burnham*, cum assensu *Miruldae* uxoris meae, et *Galfridi* mei filii et haeredis mei, dedi et concessi, et praesenti carta mea confirmavi, *Galfrido* filio *Johannis de Haxai*, cum *Alicia* sorore mea, in libero maritagio, totam terram quam habui arabilem et in prato in *Blespit* ; illi scilicet et haeredibus suis, tenendam de me et haeredibus meis, libere, solide, et quiete : Reddendo inde annuatim mihi et haeredibus meis, pro omni servicio et exactione saeculari ad nos pertinente, iiij$^{or}$ denarios ad duos terminos, scilicet duos denar. ad festum *Omnium Sanctorum*, et duos denar. ad Purificacionem beatae Mariae. Et ego et haeredes mei, praedictam terram illi et haeredibus suis, pro praedicto servicio, contra omnes homines warantizabimus in perpetuum. Hiis testibus, *Roberto Takel* de *Burnham*, *Galfrido de Burnham*, *Roberto de Burnham*, *Roberto Norrais*, *Gregorio ad Aulam*, *Samsone de Landeles*, *Elid* Capellano ; et multis aliis. *Ap. Formulare Anglicanum*, *p.* 81.

No. III.

## No. III. P. 254.

ART. I. *A Grant of Privilege and Protection from King Edward to the Abbey of Bury St. Edmund.*

EADWEARDUS Rex ſalutem mitto meis Epiſcopis et meis Comitibus, et omnibus Theinis meis qui ſunt in Sciris ubi Sanctus Eadmundus habet Terras, benevole. Et vobis ſignifico, quod volo ut *Leofſtannus* Abbas et omnes Fratres in *Eadmundi burgo* Saca et Socna ſua libere potiantur de omnibus ſuis propriis hominibus, tam intra Burgum quam extra. Et nolo pati ut quiſquam eis ullam injuriam inferat. *Ap. Form. Anglic. p.* 290.

ART. II. *A Mandate of Protection from King Henry the Second for the Abbey of Battell.*

H. DEI gratia Rex *Angliae*, et Dux *Normanniae* et *Aquitaniae*, et *Comes Andegaviae*, Juſticiariis, Vicecomitibus, et omnibus Miniſtris ſuis *Angliae*, in quorum baillivis Abbas et Monachi de *Bello* habent terras, ſalutem. Praecipio vobis, quod cuſtodiatis et manuteneatis et protegatis Abbatiam de *Bello* et Monachos

nachos ibidem Deo ſervientes, et terras et omnes res et poſſeſſiones ſuas, ſicut meas proprias ; nequis eis injuriam faciat vel contumeliam ; Et non vexetis eos, nec injuriam aliquam eis faciatis nec fieri permittatis, exigendo ab eis conſuetudines vel ſervitia quae Cartae meae et Anteceſſorum meorum teſtantur quod facere non debent ; Et ſiquis eis injuriam intulerit, contra libertates et conſuetudines quas Cartae ſuae teſtantur quod habere debent, eam ipſis ſine dilatione emendari faciatis. Teſte *Ricardo* Epiſcopo *Wintonienſi* apud *Lutegareſhall. Ap. Form. Anglic. p.* 296.

ART. III. *Fines made to Kings, that they would remit their Reſentments and Indignation.*

OSBERTUS de Lerec. debet CC marcas argenti, ut Rex pardonaret ei et Oſberto Clerico ſuo malivolentiam ſuam. *Mag. Rot.* 5. *Steph.*

Tomas Clericus de Camera debet ij palefridos pro Roberto Capellano, ut Rex perdonaret eidem Roberto, malivolentiam ſuam, quia comedit cum praedicto Toma apud Corf. *Mag. Rot.* 6. *Joh.*

Galfridus de Inſula debet quater xxxv marcas, ut Rex remittat indignationem. *Ex. Memor.* 31. *Henr.* 3. *Rot.* 10. Willelmus

elmus de Ros debet c marcas, ut Rex remittat indignationem. *Ib. Rot.* 11. *Madox, Hiſt. of the Exchequer, vol.* 1. *p.* 472—476.

ART. IV. *Fines for Favour, and Protection.*

GILEBERTUS filius Fergaſi debet DCCCC et xix l. et ix s. pro habenda benevolentia Regis. *Mag. Rot.* 26. *H.* 2. *Rot.* 4.

Radulfus Murdac debet L l. and vij s. and viij d. pro habendo amore regis Ricardi. *Mag. Rot.* 11. *J. Rot.* 14.

Decanus et capitulum Londoniae debent ij palefridos, pro protectione, nec vexentur contra libertates cartarum ſuarum. *Mag. Rot.* 2. *J. Rot.* 11. *Hiſt. of Excheq. ch.* 13.

## No. IV. P. 262.

*An Accord or Truce between the Earl Marſhall, and the Earl of Glouceſter, and their Men, under Reciprocal Oath.*

SCIANT hoc ſcriptum viſuri, quod cum die *Dominica* proxima ante *Cathedram* Sancti *Petri*, Inter Dominum *R. de Clifford* ex parte Comitis *Mareſcalli*, Et Dominum *Ricardum Baſſet* et *Martinum Hoſtiarium*, ex parte Comitis *Gloceſtriae*, ſuper quibuſdam exceſſibus tractatus haberetur; Tandem inter eos ſic convenit. Videlicet quod Homines dictorum Comitum, fidelem et firmam Treugam ex utraque parte, a dicta die *Dominica* uſque in ſexdecim dies proximo ſequentes inviolabiliter obſervabunt. Et Dominus *R. de Clyfford*, die *Lunae* proximo poſt dictum Feſtum, ad Comitem *Gloceſtriae* apud *Cirenceſtriam* accedet, ad formandam pacem inter praedictos Comites. Et ſi alter eorum tunc venire nequiverit, hoc alteri parti die *Veneris* proximo praecedente vel die Sabbati, ſcilicet Comiti *Gloceſtriae* apud *Fayreford*, vel Domino *Rogero de Clyfford* apud *Suttun* juxta *Banneburiam* denuncietur. Ad hoc ſi *Morgan* filius *Hoel* dictam Tregam pro ſe et Hominibus ſuis tenere voluerit, recipiatur in ipſam; Quod ſi noluerit, tunc durantibus Treugis habitabit in montanis, nec in aliquod Caſtrum vel Burgum ipſe vel ſui interim

terim admittentur. Haec autem firmiter, et abſque dolo, et omni cavillatione, Dominus *R. de Clyfford* et *W. de Lucy* ex parte Comitis *Marſcalli*, et Dominus *R. Baſſet* et *M. Hoſtiarius* pro Comite *Glouceſtriae*, affidaverunt. In hujus autem rei teſtimonium, praeſens ſcriptum in modum Cirograffi eſt compoſitum; Cujus una pars, Sigillis dicti *R. de Clyfford* et *W. de Lucy* ſingnata, dictis *R. Baſſet* et *M.* eſt commiſſa, Reliqua vero parte, ſingnis dicti *R. Baſſet* et *M.* ſingnata, penes *R. de Clyfford* remanente. *Ap. Form. Anglic. p.* 84.

## No. V. P. 282.

ART. I. *An Injunction not to torney by Henry* III.

REX Comitibus, Baronibus, Militibus, et omnibus aliis, ad inſtantem diem Jovis in vigilia Beati Martini, ſeu aliis diebus apud Warrewicum, ad torneandum ibidem conventuris, ſalutem. Mandamus vobis, in fide, homagio et dilectione, quibus nobis tenemini, firmiter injungentes, et ſub poena amiſſionis terrarum et tenementorum et omnium bonorum veſtrorum, quae in regno noſtro habetis, diſtricte inhibentes, ne ibi vel alibi in eodem regno noſtro torneare, juſtas facere, aventuras quaerere, ſeu alio modo ad arma ire, praeſumatis, ſine Licentia noſtra ſpeciali. Scituri, quod ſi ſecus egeritis, nos terras, tenementa et omnia bona veſtra in manum noſtram capiemus, et ea retinebimus tanquam nobis forisfacta. In cujus, &c. T. Rege apud Weſtmon. iiii die Novembris. *Pat.* 57. *Hen.* 3. *m.* 1. *Apud Madox, Baronia Anglica, p.* 283.

ART.

ART. II. *A Prohibition of Torneaments by Edward* III.

REX Vicecomiti Lincolniae ſalutem. Praecipimus tibi, firmiter injungentes, quod ſtatim viſis praeſentibus, per totam ballivam tuam, in Civitatibus, Burgis, et locis aliis quibus melius videris expedire, publice proclamari, et diſtricte ex parte noſtra facias inhiberi, nequi ſub forisfactura vitae et membrorum, terrarum et tenementorum, bonorum et catallorum ſuorum, ac omnium illorum quae nobis forisfacere poterunt, torneamenta, juſtas aut burdeicias facere, ſeu aliter infra ballivam tuam ad arma ire praeſumant, ſet ſe praeparent quanto potentius poterunt, ad proficiſcendum nobiſcum in obſequium noſtrum ad partes Scociae, ad rebellionem et nequiciam quorundam Scotorum rebellium et proditorum noſtrorum, jam contra nos prodicionaliter inſurgencium, viriliter, cum Deo et ipſorum adjutorio, reprimendam; Ita quod omnes homines ad arma de balliva tua, quilibet videlicet juxta exigenciam Status ſui, ſint ad nos cum equis et armis apud Karliolum, in quindena Nativitatis Sancti Johannis Baptiſtae proximo futura ad ultimum, ad apponendum una nobiſcum, et cum conſi..ilibus fidelibus noſtris, quos tunc nobiſcum ibidem adeſſe contigerit, ſuper negociis Patum terrae n ſtrae Scociae tangentibus, prout nobis Altiſſimus duxerit inſpirandum conſilium et juvamen. Praecipimus eciam tibi, qu..d ſi qui vel vel quis torneamenta, juſtas, aut burdeicias, contra hanc inhibi-

tionem

tionem noſtram, infra ballivam tuam facere, ſeu aliter ad arma ire praeſumant vel praeſumat, tunc corpora ipſorum vel ipſius, quos vel quem delinquentes vel delinquentem inveneris in hac parte, ſine dilatione capias, et in priſona noſtra ſalvo cuſtodias, donec aliud inde praeceperimus. Et nos de hiis quae facienda duxeris in praemiſſis, in craſtino Sanctae Trinitatis proximo futuro reddas diſtincte et aperte certiores, hoc breve nobis remittentes. T. Rege apud Wolveſeye vi die Aprilis.

Eodem modo mandatum eſt ſingulis Vicecomitibus Angliae. *Clauſ.* 34. *Edw.* 3. *m.* 16. *dorſo.* *Ap. Baron. Anglic. p.* 289.

No.

## No. VI. p. 298.

*The Order and Manner of creating Knights of the Bath in the Time of Peace, according to the Cuſtom of England* *.

1. WHEN an eſquire comes to court, to receive the order of knighthood, in the time of peace, according to the cuſtom of England, he ſhall be honourably received by the officers of the court; *Sc.* the ſteward or the chamberlain, if they be preſent, but otherwiſe by the marſhalls and uſhers. Then there ſhall be provided two eſquires of honour, grave, and well ſeen in courtſhip and nurture, as alſo in the feats of chivalrie,

* This narrative is a tranſlation of an old tract in French, which was firſt publiſhed by Edward Byſhe, Eſq; in his learned notes to Upton de Studio Militari, p. 21.—24. Sir William Dugdale took the trouble to turn it into Engliſh, in his antiquities of Warwickſhire, vol. 2. p. 708.—710. Both in Byſhe and in Dugdale this narrative is illuſtrated by figures, delineated from a book in which they were drawn in colours, in the time of Edward IV. Pere Daniel holds it as expreſſive of the ceremonies uſed in France; and, it is to be thought, that they were univerſal over Europe. The original French, of which the naiveté of the ſtyle has been obſerved, is to be found both in Upton and P. Daniel. Of the ceremonies, the fantaſtickneſs and levity are not more remarkable, than the important ſeriouſneſs with which they were performed.

... they ſhall ... eſquires, and governours in all things ... to him, whi... take the order aforeſaid.

2. And if the eſquire do come before dinner, he ſhall carry up one diſh of the firſt courſe to the king's table.

3. And after this the eſquire's governours ſhall conduct the eſquire, that is to receive the order, into his chamber, without any more being ſeen that day.

4. And in the evening the eſquire's governours ſhall ſend for the barbour, and they ſhall make ready a bath, handſomely hung with linen, both within and without the veſſel, taking care that it be covered with tapiſtrie and blankets, in reſpect of the coldneſs of the night. And then ſhall the eſquire be ſhaven, and his hair cut round. After which the eſquire's governours ſhall go to the king, and ſay, *Sir, it is now in the evening, and the eſquire is fitted for the bath when you pleaſe*: Whereupon the king ſhall command his chamberlain that he ſhall take along with him unto the eſquire's chamber, the moſt gentle and grave knights that are preſent, to inform, counſel, and inſtruct him touching the order, and feats of chivalrie: And, in like manner, that the other eſquires of the houſehold, with the minſtrells, ſhall proceed before the knights, ſinging, dancing, and ſporting, even to the chamber door of the ſaid eſquire.

5.

5. And when the eſquire's governours ſhall hear the noiſe of the minſtrells, they ſhall undreſs the ſaid eſquire, and put him naked into the bath: But, at the entrance into the chamber, the eſquire's governours ſhall cauſe the muſic to ceaſe, and the eſquires alſo for a while. And this being done, the grave knights ſhall enter into the chamber without making any noiſe, and, doing reverence to each other, ſhall conſider which of themſelves it ſhall be that is to inſtruct the eſquire in the order and courſe of the bath. And when they are agreed, then ſhall the chief of them go to the bath, and, kneeling down before it, ſay, with a ſoft voice: *Sir! be this bath of great honour to you*; and then he ſhall declare unto him the feats of the order, as far as he can, putting part of the water of the bath upon the ſhoulder of the eſquire; and having ſo done, take his leave. And the eſquire's governours ſhall attend at the ſides of the bath, and ſo likewiſe the other knights, the one after the other, till all be done.

6. Then ſhall theſe knights go out of the chamber for a while; and the eſquire's governours ſhall take the eſquire out of the bath, and help him to his bed, there to continue till his body be dry; which bed ſhall be plain and without curtains. And as ſoon as he is dry, they ſhall help him out of bed, they ſhall cloath him very warm, in reſpect of the cold of the night; and over his inner garments ſhall put on a robe of ruſſet, with long ſleives, having a hood thereto, like unto that of an hermite. And the eſquire being out of the bath, the barbour ſhall take away

the bath, with whatſoever appertaineth thereto, both within and without, for his fee ; and likewiſe for the coller (about his neck) be he earl, baron, baneret, or batcheler, according to the cuſtom of the court.

7. And then ſhall the eſquire's governours open the dore of the chamber, and ſhall cauſe the antient and grave knights to enter, to conduct the eſquire to the chapell: And when they are come in, the eſquires, ſporting and dancing, ſhall go before the eſquire, with the minſtrells, making melodie to the chapell.

8. And being entered the chapell, there ſhall be wine and ſpices ready to give to the knights and eſquires. And then the eſquire's governours ſhall bring the ſaid knights before the eſquire to take their leave of him ; and he ſhall give them thanks all together, for the pains, favour, and courteſie which they have done him ; and this being performed, they ſhall depart out of the chapell.

9. Then ſhall the eſquire's governours ſhut the dore of the chapell, none ſtaying therein except themſelves, the prieſt, the chandler, and the watch. And, in this manner ſhall the eſquire ſtay in the chapell all night, till it be day, beſtowing himſelf in oriſons and prayers, beſeeching Almighty God, and his bleſſed mother, that, of their good grace, they will give him ability to receive this high temporal dignitie, to the honour, praiſe, and ſervice

ſervice of them; as alſo of holy church, and the order of knighthood. And, at day break, one ſhall call the prieſt to confeſs him of all his ſins, and, having heard mattines and maſs, ſhall afterwards be commended, if he pleaſe.

10. And after his entrance into the chapell, there ſhall be a taper burning before him; and ſo ſoon as maſs is begun, one of the governours ſhall hold the taper untill the reading of the goſpell; and then ſhall the governour deliver it into his hands, who ſhall hold it himſelf, till the goſpel be ended; but then ſhall receive it again from him, and ſet it before him, there to ſtand during the whole time of maſs.

11. And at the elevation of the hoſt, one of the governours ſhall take the hood from the eſquire, and afterwards deliver it to him again, untill the goſpell *in principio*; and at the beginning thereof the governour ſhall take the ſame hood again, and cauſe it to be carried away, and ſhall give him the taper again into his own hands.

12. And then, having a peny, or more, in readineſs, near to the candleſtick, at the words *verbum caro factum eſt*, the eſquire, kneeling, ſhall offer the taper and the peny; that is to ſay, the taper to the honour of God, and the peny to the honour of the perſon that makes him a knight. All which being performed, the eſquire's governours ſhall conduct the eſquire to his chamber,

ber, and ſhall lay him again in bed till it be full day light. And when he ſhall be thus in bed, till the time of his riſing, he ſhall be cloathed with a covering of gold, called Singleton, and this ſhall be lined with blew Cardene. And when the governours ſhall ſee it fit time, they ſhall go to the king, and ſay to him; *Sir, when doth it pleaſe you that our maſter ſhall riſe?* Whereupon the king ſhall command the grave knights, eſquires, and minſtrells, to go to the chamber of the ſaid eſquire for to raiſe him, and to attire and dreſs him, and to bring him before him into the hall. But, before their entrance, and the noiſe of the minſtrells heard, the eſquire's governours ſhall provide all neceſſaries ready for the order, to deliver to the knights, for to attire and dreſs the eſquire.

And when the knights are come to the eſquire's chamber, they ſhall enter with leave, and ſay to him; *Sir, Good-morrow to you, it is time to get up and make yourſelf ready;* and thereupon they ſhall take him by the arm to be dreſſed, the moſt antient of the ſaid knights reaching him his ſhirt, another giving him his breeches, the third his doublet; and another putting upon him a kirtle of red Tartarin, two other ſhall raiſe him from the bed, and two other put on his nether ſtockings, with ſoles of leather ſowed to them; two other ſhall lace his ſleives, and another ſhall gird him with a girdle of white leather, without any buckles thereon; another ſhall combe his head; another ſhall put on his coife; another ſhall give him his mantle of ſilk

(over

(over the baſes or kirtle of red Tartarin) tyed with a lace of white ſilk, with a pair of white gloves hanging at the end of the lace. And the chandler ſhall take for his fees all the garments, with the whole array and neceſſaries wherewith the eſquire ſhall be apparelled and cloathed on the day that he comes into the court to receive the order; as alſo the bed wherein he firſt lay after his bathing, together with the ſingleton and other neceſſaries; in conſideration of which fees, the ſame chandler ſhall find, at his proper coſt, the ſaid coife, the gloves, the girdle, and the lace.

13. And when all this is done, the grave knights ſhall get on horſeback, and conduct the eſquire to the hall, the minſtrells going before making muſick: But the horſe muſt be accoutred as followeth: The ſaddle having a cover of black leather, the bow of the ſaddle being of white wood quartered. The ſtirrup-leathers black, the ſtirrups gilt; the paitrell of black leather gilt, with a croſs pate gilt, hanging before the breaſt of the horſe, but without any crooper: The bridle black, with long notched rains, after the Spaniſh faſhion, and a croſs paté on the front. And there muſt be provided a young eſquire, courteous, who ſhall ride before the eſquire, barcheaded, and carry the eſquire's ſword, with the ſpurs hanging at the handle of the ſword; and the ſcabbard of the ſword ſhall be of white leather, and the girdle of white leather, without buckles. And the youth ſhall hold the

the ſword by the point, and after this manner muſt they ride to the king's hall, the governours being ready at hand.

14 And the grave knights ſhall conduct the ſaid eſquire; and ſo ſoon as they come before the hall dore, the marſhalls and huiſhers are to be ready to meet him, and deſire him to alight; and being alighted, the marſhall ſhall take the horſe for his fee, or elſe c s. Then ſhall the knights conduct him into the hall, up to the high table, and afterwards up to the end of the ſecond table, until the king's coming, the knights ſtanding on each ſide of him, and the youth holding the ſword upright before him, between the two governours.

15. And when the king is come into the hall, and beholdeth the eſquire ready to receive this high order and temporal dignitie, he ſhall aſke for the ſword and ſpurs, which the chamberlain ſhall take from the youth, and ſhew to the king; and thereupon the king, taking the right ſpur, ſhall deliver it to the moſt noble and gentile perſon there, and ſhall ſay to him, *Put this upon the eſquire's heel;* and he kneeling on one knee, muſt take the eſquire by the right leg, and, putting his foot on his own knee, is to faſten the ſpur upon the right heel of the eſquire; and then making a croſs upon the eſquire's knee, ſhall kiſs him; which being done, another knight muſt come and put on his left ſpur in the like manner. And then ſhall the king, of his great favour, take the ſword and gird the eſquire therewith;

therewith; whereupon the eſquire is to lift up his arms, holding his hands together, and the gloves betwixt his thumbs and fingers.

16. And the king, putting his own armes about the eſquire's neck, ſhall ſay, *Be thou a good knight*, and afterwards kiſs him. Then are the antient knights to conduct this new knight to the chapell, with much muſick, even to the high altar, and there he ſhall kneel, and, putting his right-hand upon the altar, is to promiſe to maintain the rights of the holy church, during his whole life.

17. And then he ſhall ungirt himſelf of his ſword, and, with great devotion to God and holy church, offer it there; praying unto God and all his ſaints, that he may keep that order, which he hath ſo taken, even to the end: All which being accompliſhed, he is to take a draught of wine.

18. And, at his going out of the chapell, the king's maſter-cook being ready to take off his ſpurs, for his own fee, ſhall ſay, *I the king's maſter-cook am come to receive your ſpurs for my fee; and if you do any thing contrary to the order of knighthood, (which God forbid), I ſhall hack your ſpurs from your heels.*

19. After this the knights muſt conduct him again into the hall, where he ſhall ſit the firſt at the knight's table, and the knights

knights about him, himſelf to be ſerved as the others are; but he muſt neither cut nor drink at the table, nor ſpit, nor look about him, upwards or downwards, more than a bride. And this being done, one of his governours having a handkerchief in his hand, ſhall hold it before his face when he is to ſpit. And when the king is riſen from the table, and gone into his chamber, then ſhall the new knight be conducted, with great ſtore of knights, and minſtrells proceeding before him, into his own chamber; and at his entrance, the knights and minſtrells ſhall take leave of him, and go to dinner.

20. And the knights being thus gone, the chamber dore ſhall be faſtened, and the new knight diſrobed of his attire, which is to be given to the kings of armes, in caſe they be there preſent; and if not, then to the other heralds, if they be there; otherwiſe, to the minſtrells, together with a mark of ſilver, if he be a knight bacheler; if a baron, double to that; if an earl, or of a ſuperior rank, double thereto. And the ruſſet night-cap muſt be given to the watch, or elſe a noble.

Then is he to be cloathed again with a blew robe, the ſleives whereof to be ſtreight, ſhaped after the faſhion of a prieſt's; and upon his left ſhoulder to have a lace of white ſilk hanging: And he ſhall wear that lace upon all his garments, from that day forwards, untill he have gained ſome honour and renown by arms, and is regiſtred of as high record as the nobles, knights, eſquires,

eſquires, and heralds of arms; and be renowned for ſome feats of arms as aforeſaid; or, that ſome great prince, or moſt noble ladie, can cut that lace from his thoulder, ſaying, *Sir! we have heard ſo much of the true renown concerning your honour, which you have done in divers parts, to the great fame of Chivalrie, as to yourſelf, and of him that made you a knight, that it is meet this lace be taken from you.*

21. After dinner, the knights of honour and gentlemen, muſt come to the knight, and conduct him into the preſence of the king, the eſquire's governours going before him, where he is to ſay, *Right noble and renowned Sir! I do in all that I can give you thanks for theſe honours, curteſies, and bountie, which you have vouchſafed to me.* And having ſo ſaid, ſhall take his leave of the king.

22. Then are the eſquire's governours to take leave of this their maſter, ſaying, *Sir! we have, according to the king's command, and as we were obliged, done what we can; but if through negligence we have in aught diſpleaſed you, or by any thing we have done amiſs at this time, we deſire pardon of you for it. And, on the other ſide, Sir, as right is, according to the cuſtoms of the court, and antient kingdoms, we do require our robes and fees, as the king's eſquires, companions to batchelors and other lords.*

THE END.

## CORRECTIONS.

Page 163, line ſixth from the top, for *was* read *were*.

Page 177, line ſixth from the top, for *quem* read *quam*.

Page 184, line third from the bottom, for *rupta* read *rapta*.

Page 221, line fourth from the top, for *Mr Lombard* read *Mr Lambard*.

Page 230, line fourth from the top, for *ſtates* read *tribes*.

Page 304, line ſeventh from the bottom, for *vois* read *bois*.

Page 381, line ſixth from the top, for *valuable* read *uſeful*.

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